

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 VS.

CR. NO. 15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 3

9 Transcript of Combined Motions to Suppress
10 Proceedings before The Honorable James O. Browning,
11 United States District Judge, Las Cruces, Dona
County, New Mexico, commencing on December 13, 2017.

12 For the Government: Ms. Maria Armijo; Mr. Randy
13 Castellano; Mr. Matthew Beck

14 For the Defendants: Mr. Brock Benjamin; Ms. Cori
15 Harbour-Valdez; Mr. Patrick Burke; Mr. Robert Cooper;
16 Mr. Jeff Lahann; Mr. Orlando Mondragon; Mr. John
17 Granberg; Mr. Billy Blackburn; Mr. Scott Davidson;
18 Ms. Amy Jacks; Mr. Richard Jewkes; Ms. Amy Sirignano;
Mr. Christopher Adams; Mr. Marc Lowry; Ms. Theresa
Duncan; Ms. Carey Bhalla; Mr. William Maynard; Mr.
Ryan Villa; Ms. Justine Fox-Young; Mr. Donovan
Roberts; Ms. Lisa Torracco; Ms. Angela Arellanes; Mr.
Samuel Winder

19 For the Defendants (Via telephone): Mr. James Castle
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1 THE COURT: All right. Let's go on the
2 record. I appreciate everybody being here on time,
3 ready to go. I guess we've got three defendants
4 without the black boxes today. I guess we got some
5 injuries, so a few people that have got them off. So
6 I appreciate everybody working hard to make
7 everything work for us. I do appreciate everybody's
8 being cooperative here.

9 Let's see. Ms. Harbour-Valdez, you're
10 going to need to go to a show cause hearing in front
11 of Judge Vidmar at 9:30?

12 MS. HARBOUR-VALDEZ: Yes, Your Honor.
13 Thank you.

14 THE COURT: And, Mr. Burke, you're leaving
15 at noon?

16 MR. BURKE: At the afternoon break.

17 THE COURT: Afternoon break.

18 Let's see. I didn't put on the record Ms.
19 Sirignano left after the last break yesterday
20 afternoon; correct?

21 MS. SIRIGNANO: Yes, Your Honor.

22 THE COURT: Who is on the phone?

23 MR. CASTLE: Jim Castle is on the phone.

24 THE COURT: Mr. Castle, good morning to
25 you.

1 Anybody else on the phone? I've got one
2 person on the phone? Anybody with a mute button on
3 that's on the phone? All right.

4 Any other changes that we have?

5 All right. Mr. Adams.

6 MR. ADAMS: Judge, I do have one
7 housekeeping matter related to the black boxes. The
8 gentlemen, the defendants have been out of the black
9 boxes. Then there was some sort of issue that I
10 heard about in the beginning of the November
11 hearings, November 8 and 9, I believe, and they were
12 put back in the black boxes. And you had indicated
13 that we should get to the bottom of it. But you
14 didn't need to necessarily dig that deep in the
15 weeds. There apparently had been some sort of
16 reference to somebody bringing in shanks. But that
17 person was actually a cooperating witness, not these
18 defendants. They have been here, they've been
19 behaving. From my view in the back, they seem to do
20 great; great yesterday in a situation where nobody
21 really knew how they would behave when a cooperating
22 witness came and testified in the afternoon.

23 So my request is that for the hearings next
24 week, if they could all be out of their black boxes.
25 I believe there was a time when Mr. Baca was behind a

1 screen, and that was challenged, and you listened,
2 and you addressed Mr. Baca, as I recall, and you
3 stood up and you stepped down and said: You're a
4 leader of men, and he may very well be a leader of
5 men, and could you get a gentleman's agreement that
6 if he came out from behind the screen, he would
7 conduct himself like he should in your courtroom.
8 And he has. That was over a year ago. And he has.

9 And I think if you have that same address
10 to these gentlemen today, starting next week, you're
11 not going to have any problems with them. We need to
12 get them starting to feel more natural as their trial
13 approaches, how they might really be in the
14 courtroom, and not just caged up like they're walking
15 someplace in the BOP. That will help us help them.
16 And we make a request of you today.

17 THE COURT: Well, let's do this: Why don't
18 you talk to the marshals, the gentleman right back
19 there at the back of the door is the one to talk to.
20 So talk to him. And I'll probably take a lot of my
21 cues from what their pulse is. So why don't y'all
22 talk to them. We're going to be here all day. And
23 I'm sure somebody will be get back with me and let me
24 know what they're thinking. Okay?

25 MR. ADAMS: Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Adams.

2 All right. Mr. Beck, have you joined the
3 defense side over there?

4 (Applause.)

5 THE COURT: A lot of times, I've seen where
6 they wouldn't take you, but --

7 MR. BECK: They wouldn't, Your Honor.

8 I believe -- I think the plan is this
9 morning that we'll put Bryan Acee back up, and Ms.
10 Bhalla will resume her cross-examination, and we'll
11 pick up where we left off yesterday on the motion to
12 suppress.

13 THE COURT: Okay. Boy, I got lost. We
14 finished with Mr. Cordova. Had we broken --

15 MR. BECK: Yes, we did, yesterday we
16 decided after lunch to put on Mr. Cordova to make
17 sure he got finished, and I think Ms. Bhalla was
18 still cross-examining Mr. Acee.

19 THE COURT: All right. Mr. Acee, if you'll
20 return to the witness box, I'll remind you you're
21 still under oath. Ms. Bhalla, if you wish to
22 continue your cross-examination of Mr. Acee.

23 MS. BHALLA: Yes, sir. Thank you.

24 THE COURT: Ms. Bhalla.

25

EXAMINATION

BY MS. BHALLA:

Q. Good morning, Agent Acee.

A. Good morning.

Q. I think where we left off yesterday, we were talking about the 302s and the 1023s that were prepared on Mr. Cordova. Were any -- and you were here for the testimony yesterday; correct?

A. Yes.

Q. Okay. You heard about a meeting that Mr. Cordova says took place after he was pulled from the pods next to Mr. Herrera and Mr. Perez, between you, Mr. Cordova, and his attorney?

A. Yes.

Q. Okay. Did you prepare any kind of report on that meeting, or was a report prepared?

A. I'm not sure. My recollection of that meeting was discussing him being charged federally.

Q. Okay. So you didn't have any conversations with him about -- at that time, about what information he was able to extract?

A. No. My recollection is that, once he got an attorney, there were no more debriefings.

Q. Okay. Did you ever have a debrief with him about the statements he was able to retrieve from Mr.

1 Perez and Mr. Herrera?

2 A. Not a full debrief, no.

3 Q. Okay. So did you have an informal meeting
4 then? What did you have?

5 A. I think we had some informal meetings. We
6 had some discussion. But once his attorney got
7 involved, I didn't have the same access to him.

8 Q. Okay. Did you memorialize those
9 conversations in any way?

10 A. I'm not sure. I would need to check his
11 informant file and our case file.

12 Q. Okay. You testified yesterday that once
13 you found out about what happened with Mr. Cordova
14 and some of the other informants with the contact
15 visits, that you went and spoke to them; is that
16 correct?

17 A. Yes.

18 Q. Okay. After you found out about the issue
19 that we're here for today, about the Suboxone or the
20 allegations that Suboxone was given, did you go talk
21 to Mr. Cordova about that?

22 A. No.

23 Q. So you never confronted him or asked him
24 about that allegation?

25 A. No. He was asked. But it was through his

1 attorney, and the response was provided back through
2 his attorney. I didn't speak to him directly.

3 Q. Who was responsible for getting him an
4 attorney?

5 A. The Court.

6 Q. Okay. And do you know why that happened?

7 A. We gave him a target letter.

8 Q. Okay. To your knowledge, did you discuss
9 lump sum credits with Mr. Cordova?

10 A. No.

11 Q. Were lump sum credits given to Mr. Cordova?

12 A. No.

13 Q. Okay. Are you familiar with Mr.
14 Rodriguez's 302 dated -- the conversation took place,
15 I should say, on November 1st of 2017?

16 A. Did I write that one, or did Stemo?

17 Q. I believe you wrote it.

18 A. I'm familiar with it.

19 Q. You are?

20 A. Yes.

21 Q. Do you recall speaking with him about the
22 effects of segregation and solitary confinement?

23 A. Yes.

24 Q. Okay. Do you recall his statement:

25 Everyone gets paranoid, and that inmates in solitary

1 confinement develop significant psychological and
2 social problems as a result?

3 A. He did tell me that.

4 Q. Okay. Did he also detail to you how
5 Suboxone is typically mailed into the prison
6 disguised as legal mail?

7 A. Yes.

8 Q. Do you also recall him telling you, and I
9 quote, "Suboxone gets you higher than fuck"?

10 A. Yes.

11 Q. Okay.

12 MS. BHALLA: Can I have just one second,
13 Your Honor?

14 THE COURT: You may.

15 MS. BHALLA: I have nothing further.

16 THE COURT: Thank you, Ms. Bhalla. Any of
17 the defendants have cross-examination?

18 MR. LAHANN: Your Honor, if I may.

19 THE COURT: Mr. Lahann.

20 EXAMINATION

21 BY MR. LAHANN:

22 Q. Agent Acee, do you recall yesterday, when
23 Mr. Beck was asking you if it appeared that Mr. Perez
24 seemed under the influence in the recordings that you
25 listened to?

1 A. Yes, sir.

2 Q. And you stated that he seemed fine?

3 A. Yes.

4 Q. And Mr. Beck, in laying that foundation, he
5 went through your previous life as a patrol officer.
6 And I think you said that you had the DRE training in
7 California?

8 A. Yes, sir.

9 Q. And were you actually certified?

10 A. Yes.

11 Q. And that's -- from what I've heard from DRE
12 experts, they describe it as one of the most rigorous
13 trainings that they've done in their law enforcement
14 careers. Would you agree with that? Intellectually
15 rigorous.

16 A. It had its challenges.

17 Q. The DRE protocol is a 12-step protocol; is
18 that right?

19 A. Yes, sir.

20 Q. And actually, there is a 13th step, because
21 somebody in the field, an officer in the field, has
22 already done field sobriety tests, and they brought
23 somebody in to the station; you're usually called out
24 as a DRE to kind of follow-up; is that correct?

25 A. Yes, sir. The first step, though, is I

1 would redo many of those same field sobriety tests.

2 Q. And you would agree that the protocol is
3 much more complicated than a standardized roadside
4 field sobriety test; is that right?

5 A. Yes, sir, it is.

6 Q. And if you're doing that entire protocol,
7 the 12 steps -- well, the 11 steps that you do --
8 that should take about an hour and a half?

9 A. Sometimes longer, yes.

10 Q. Because during that hour and a half or
11 longer, you're required to take the suspect's pulse
12 and blood pressure, and temperature three different
13 times; is that right?

14 A. Yes, sir.

15 Q. You give the standardized field sobriety
16 tests again; is that right?

17 A. It is, correct.

18 Q. And you give additional physical tests
19 beyond the standardized tests; is that right?

20 A. Yes.

21 Q. The Romberg Balance, and the touching the
22 nose, and all that?

23 A. Dark room, yes.

24 Q. Dark room, because you're checking pupil
25 size in light, and then you turn the lights off and

1 you check it again; is that right?

2 A. Yes, sir.

3 Q. The 11th step in the DRE protocol is,
4 basically, you writing down your opinion; is that
5 correct?

6 A. Yes, sir.

7 Q. And you're taught as a DRE expert that
8 every opinion needs to be logged, whether you find
9 somebody under the influence or not; is that correct?

10 A. Correct.

11 Q. And the 12th step, of course, is taking
12 blood and sending results to have that analyzed?

13 A. Toxicology, yes, sir.

14 Q. Okay. And because you were listening to a
15 recording in this case, it's safe to say that you
16 didn't do any of those 11 steps that you would be
17 required to do to form an opinion about whether
18 somebody is under the influence?

19 A. Correct.

20 Q. So your opinion that Mr. Perez seemed not
21 under the influence really is pretty much a lay
22 opinion; is that correct?

23 A. Fair to say.

24 MR. LAHANN: Thank you. No further
25 questions.

1 THE COURT: Thank you, Mr. Lahann.

2 Any other defendants have cross-examination
3 of Mr. Acee?

4 MS. JACKS: I have a few questions.

5 THE COURT: Ms. Jacks.

6 Ms. Armijo, I didn't welcome you today.
7 Good morning to you.

8 MS. ARMIJO: Thank you, Your Honor.

9 EXAMINATION

10 BY MS. JACKS:

11 Q. Good morning, Agent Acee.

12 A. Good morning.

13 Q. I just want to follow up on a couple of
14 things that you spoke about yesterday, and I think
15 this was on direct examination.

16 One of the things that you talked about was
17 Billy Cordova's murder conviction or conviction for
18 manslaughter in December of 2015. Do you recall that
19 testimony?

20 A. Yes.

21 Q. And I think what you said was that you were
22 investigating that, or you were considering that as a
23 potential racketeering activity of the SNM; is that
24 right?

25 A. Yes.

1 Q. And I think you also said that you and Mr.
2 Cordova -- you thought you and Mr. Cordova disagreed
3 about that?

4 A. Yes.

5 Q. You heard Mr. Cordova testify about that
6 offense yesterday, didn't you? You were here in
7 court?

8 A. I was.

9 Q. And Mr. Cordova said that he was convicted
10 of a crime that he didn't commit. Was that true?

11 A. Well, he was convicted.

12 Q. But was he convicted of a crime he didn't
13 commit?

14 A. I believe he was convicted of a crime he
15 did commit.

16 Q. Okay. So the testimony that Mr. Cordova
17 gave yesterday was false?

18 THE COURT: Well, I think I probably should
19 be the one to determine that rather than Mr. Acee.
20 So I'll not allow that question or answer.

21 Q. Agent Acee, did you discuss with Mr.
22 Cordova that you were investigating that homicide,
23 whether it be a murder or manslaughter, as a
24 potential overt act in the racketeering conspiracy?

25 A. No.

1 Q. Did you discuss with him the fact that he
2 was convicted of that offense, and that it could be
3 used in some federal prosecution?

4 A. I don't think I did.

5 Q. I also think on direct examination you
6 testified that, after you opened Mr. Cordova as a
7 confidential informant, you talked to him about
8 perhaps continuing his work as a confidential
9 informant once he got out of the prison. Do you
10 recall that?

11 A. He asked me if that was a possibility.

12 Q. And it was something that you had done with
13 other government informants in this case?

14 A. Yes.

15 Q. And you're saying Mr. Cordova initiated
16 that conversation?

17 A. Yes.

18 Q. As a potential career path outside of
19 prison?

20 A. Yes.

21 Q. In exchange for -- he would work as an
22 informant in exchange for money?

23 A. I believe that was his thoughts, yes.

24 Q. And you talked with him about that in
25 either the meeting on January 4, 2016 or January 7,

1 2016?

2 A. No. That conversation, I remember it
3 happened up in L pod, what we've been calling the
4 cooperator pod. He pulled me off to the side.

5 Q. Do you recall approximately when that was?

6 A. I think it would have been late 2016,
7 because the incident where they had the inappropriate
8 contact or sex was January, is when I terminated him.
9 So it was prior to that.

10 Q. So was it shortly before that?

11 A. It would have probably been within a few
12 months of that.

13 Q. Well, you worked with another government
14 cooperator, Eric Duran, correct, in terms of hooking
15 him up with some other agent on the outside to work
16 as a confidential informant in exchange for money
17 outside, once he got released from prison, right?

18 A. It's true that I hooked him up with agents
19 in another division. I presume they would pay him.
20 But that's their decision.

21 Q. But that was -- kind of the thought, was to
22 give him a way to support himself once he got out of
23 prison?

24 A. Well, I always push for: You need to get a
25 job. Don't count on a paycheck from us. But I'm

1 sure he wanted money, and I believe he was paid some
2 amount of money.

3 Q. Was the discussion you had with -- the
4 discussion when Mr. Cordova pulled you over and
5 inquired, maybe something like that would work out
6 for him, was that contemporaneous with that working
7 out for Mr. Duran?

8 A. I was doubtful it could work as well for
9 Mr. Cordova, because he didn't want to leave New
10 Mexico.

11 Q. That wasn't my question, though. My
12 question was, was the timing of Mr. Cordova
13 approaching you contemporaneous with the timing of
14 that arrangement being made for Mr. Duran?

15 A. I'm sorry. I see what you're saying.
16 Mr. Duran was gone for a few months. I think they
17 were in the pod at the same time. So they may have
18 talked about that. Am I answering your question?

19 Q. Yes.

20 A. But I'm not sure.

21 Q. And the timing -- does that, in your mind,
22 seem to be approximately the same time that that had
23 happened for Mr. Duran?

24 A. Yes, that could have lined up. I don't
25 know what Duran told him. I certainly didn't tell

1 the other defendants where Duran was going, or what
2 he was going to be doing.

3 Q. Okay. And you're clear about the fact that
4 it was Mr. Cordova that approached you, suggesting
5 this arrangement might work out for him?

6 A. Yes, minus the relocation to another state
7 part. He wanted to stay in New Mexico and work.

8 Q. But yesterday, when you talked about this
9 conversation, you said that you talked to him about
10 when he gets out, you could relocate him to another
11 city, and with another agent, do some sort of active
12 cooperation?

13 A. I don't know that I said that. And I can
14 try to clarify, if you'd like.

15 Q. That's all right. We have a transcript,
16 so -- I want to talk to you a little bit about L pod.
17 When was it that you first became aware that there
18 was an arrangement at the New Mexico Department of
19 Corrections where all the cooperators were being
20 housed together?

21 A. I think I became aware of it as soon as the
22 marshals had the first six guys up there, because the
23 contract allowed for six. So that would have been
24 sometime after the first phase takedown, sometime
25 after December 2015.

1 Q. Sometime shortly after December 2015?

2 A. I believe so.

3 Q. And how did you find out that that was the
4 way the informants were being handled?

5 A. That they were being sent up there?

6 Q. Right.

7 A. I track where most of the defendants are,
8 cooperators and not.

9 Q. Because you would need to go up and talk to
10 them?

11 A. That's one of the reasons.

12 Q. Were the cooperating witnesses housed in
13 the same pod, L pod, at your request?

14 A. No.

15 Q. To make it easier on you or other people
16 participating in the investigation?

17 A. No. I'd argue that it didn't make it
18 easier.

19 Q. Did you have any concerns about -- first of
20 all, do you know who made that decision?

21 A. No.

22 Q. And whoever made that decision, did they do
23 it in consultation with you?

24 A. I don't think so.

25 Q. Did they do it in consultation with the

1 Government, to your knowledge?

2 A. No.

3 Q. When you found out about it sometime after
4 December of 2015, that the cooperators were being
5 housed together, did you have any concerns about that
6 situation?

7 A. I did. And those concerns lasted the
8 entire time, men were transferred in and out of that
9 pod.

10 Q. Did you discuss those concerns with
11 anybody, either from the -- with the Government
12 prosecutors or with people from the New Mexico
13 Department of Corrections?

14 A. Yes.

15 Q. And can you tell me who you talked about
16 that with?

17 A. Yes. Anytime there were issues, I'd
18 consult with the three prosecutors at the table, and
19 oftentimes the various defense attorneys that
20 represented those men, as well as STIU at the Pen,
21 and sometimes administrators there, depending on what
22 the issue was.

23 Q. Well, did you have any sort of overarching
24 concerns about the Government housing its cooperating
25 witnesses in the same place, where they could

1 interact freely with each other?

2 A. I had some concerns.

3 Q. And what were -- and I'm talking about
4 overarching concerns, not about personal differences
5 between people, but just generally, why that might
6 not be a good idea?

7 A. Yes.

8 Q. Can you tell me why that would be?

9 A. Talking to one another.

10 Q. And doing what? Getting their stories
11 straight?

12 A. Well, they're talking to one another about
13 the case.

14 Q. And there is no way to prevent that, is
15 there?

16 A. Not if they're housed together.

17 Q. Did you bring that issue to anybody in an
18 effort to prevent that situation from continuing, all
19 the cooperators being housed together?

20 A. No.

21 Q. And if I understand your testimony
22 correctly, that ultimately -- that pod was ultimately
23 broken up sometime in January of 2017?

24 A. Yes.

25 Q. And that was due to the fact that numerous

1 cooperators were using contact visits to engage in
2 sexual activity with females?

3 A. Four of them were.

4 Q. Over an extended period of time, right?

5 A. Happened more than once.

6 Q. I want to ask you some questions about
7 providing a recording device to Billy Cordova,
8 specifically. When you talked to him about sending
9 him into the prison to make recordings, did you talk
10 to him about the importance of preserving the
11 integrity of the evidence he was collecting?

12 A. Not in those words, no.

13 Q. Well, did you talk -- did you talk to him
14 at all, or did you advise him at all about how the
15 recording device was to be operated, in terms of when
16 he's having conversations with people, what
17 conversations he should be recording?

18 A. Yes.

19 Q. And what did you tell him?

20 A. Well, that if it's not recorded, the
21 conversation, in my mind, didn't happen. So if there
22 was pertinent information that he was able to talk to
23 these gentlemen about, it needed to be recorded.

24 At the same time I reminded him that it was
25 a small device and that it was battery powered. That

1 I had had cooperators in this case tell me they've
2 obtained confessions, if you will, from people; I get
3 the device back and it's not on there. So it doesn't
4 count in my mind. So I just reiterated the
5 importance of conserving the battery and making sure
6 he captured the conversations.

7 Q. Did you give him any instruction about
8 capturing entire conversation, as opposed to just
9 snippets of conversations?

10 A. No. And it would be a fair to say I didn't
11 do that. And I placed the importance on, if they're
12 talking about murders, make sure it's recorded.

13 Q. When did you start paying Mr. Cordova on
14 his commissary account?

15 A. A review of his file would enable me to
16 give you an exact answer. But I believe it was
17 shortly after I opened him. Because that's normally
18 what I do. I wouldn't deviate from that. So I think
19 it was by February of 2016.

20 Q. And it was a monthly payment of \$50?

21 A. No. Because it's difficult to get the
22 money in there. So the average was 50. So if I
23 could put \$300 on the books, and then not deal with
24 it again until several months later, that's what I
25 did.

1 Q. When was the last time you made a payment
2 to his commissary account?

3 A. I'm not sure. I think it covered up till
4 December. It might have covered January, because I
5 might have advanced it. But I closed him in January.
6 And in order for me to close him, all payments have
7 to be completed and rectified, and the paperwork is
8 in. So January he didn't receive any money after
9 that for sure.

10 Q. Okay. So your testimony is that after you
11 found out about the way he was abusing the privileges
12 and engaging in sexual activity in front of children,
13 you stopped paying him?

14 A. Not only that, I closed him. Yes.

15 Q. So you -- closing means you terminated him
16 as a cooperating witness?

17 A. No, as a confidential human source.
18 Whether or not he's a witness isn't my decision.

19 Q. Okay. So you closed him as a confidential
20 source, you closed the file on him?

21 A. I did.

22 Q. And since January of 2017, have you made
23 any effort or any recommendations to charge him as
24 part of an SNM racketeering case, whether it be a
25 violent crime in furtherance of racketeering or RICO

1 conspiracy or something else?

2 A. I have had no communication with him since
3 January. I pushed for him to be charged with RICO
4 conspiracy. His attorney had different ideas. And
5 those conversations were between the prosecutors and
6 the attorney.

7 Q. Well, that sounds like conversations that
8 happened prior to his -- prior to January 2017.

9 A. I think they were.

10 Q. I think my question was since January 2017.

11 A. I don't think there has been any
12 conversation about that.

13 MS. JACKS: Thank you. I have nothing
14 further.

15 THE COURT: Thank you, Ms. Jacks.

16 Any other defendants have cross-examination
17 of Mr. Acee?

18 Mr. Beck, do you want to conduct redirect?

19 MR. BECK: Yes, Your Honor.

20 THE COURT: Mr. Beck.

21 REDIRECT EXAMINATION

22 BY MR. BECK:

23 Q. Agent Acee, on cross-examination was your
24 testimony that at some of these preliminary meetings
25 with Billy Cordova, STIU officers Sapien, Cupit, and

1 Martin were there?

2 A. Yes.

3 Q. And was Mark Myers there?

4 A. Yes.

5 Q. And did they tell you anything about
6 Mr. Perez or Mr. Herrera's psychological or mental
7 issues, if there were any?

8 A. No.

9 Q. Did they tell you anything about the
10 medications that Mr. Perez was taking?

11 A. No.

12 Q. And did you ask them to move or house Mr.
13 Perez or Mr. Herrera in any way?

14 A. No.

15 Q. I want to talk to you about Exhibit RP-C.
16 Do you remember testifying about that exhibit
17 yesterday?

18 A. Yes, sir.

19 Q. I think you said -- did you say there were
20 seven pertinent recordings on there?

21 A. I think I was asked, would I agree that
22 there were six. And I thought there could be a
23 seventh, because it looked like there was more than
24 just a few seconds of recording.

25 Q. Was the seventh you pointed to Number 1

1 yesterday, session Number 1 on there?

2 A. No.

3 Q. Which session was the pertinent one that
4 you thought you might not have talked about?

5 A. Well, I'm not sure, because I was asked, I
6 think, isn't it true there are six, and when I looked
7 at the times I thought it might be. If the decision
8 is mine, I'm going to look at all of them. But there
9 might be a seventh one.

10 Q. I'm going to show you what has been
11 previously admitted last week in a motion to suppress
12 hearing as Government's Exhibit 16. And who does
13 that transcript say is the participants in that
14 conversation?

15 A. CHS and Rudy Perez.

16 MR. BECK: All right. May I approach, Your
17 Honor?

18 THE COURT: You may.

19 Q. Take a look at that transcript, and tell me
20 whether you're familiar with the conversation in that
21 transcript.

22 A. I am.

23 Q. Who is the CHS in that transcript?

24 A. It's -- I have a blank on his name -- it's
25 Mr. Cordova.

1 Q. Billy Cordova from yesterday?

2 A. Yes.

3 MR. BECK: Your Honor, at this time, the
4 United States moves to admit, for the purposes of
5 this motion to suppress hearing, Government's Exhibit
6 16?

7 THE COURT: Any objection?

8 MR. VILLA: Your Honor, I don't. I just
9 want to clarify whether it is the same as, you know,
10 the transcripts that were admitted yesterday.

11 MR. BECK: It's not. It's the seventh
12 recording from this.

13 MR. VILLA: No objection.

14 THE COURT: Anybody else?

15 All right. Government's Exhibit 16 will be
16 admitted into evidence.

17 MS. DUNCAN: I'm sorry, Your Honor. If we
18 could get the Bates number for the transcript.

19 MR. BECK: It begins at 20529, and it ends
20 at Bates No. 20533.

21 Q. Special Agent Acee, I want to clarify, did
22 you request of the New Mexico Corrections Department
23 that the cooperators that were housed in L pod be
24 given special privileges?

25 A. No, I didn't have anything to do with that.

1 Q. Did you ask that they be allowed conjugal
2 visits?

3 A. No.

4 Q. I want to direct your attention, Agent
5 Acee, to what was admitted yesterday as Carlos
6 Herrera, CH-A. Do you recall looking over this
7 exhibit with Ms. Bhalla yesterday?

8 A. Yes.

9 Q. I believe she pointed out some of the UIs
10 or unintelligibles in that. Do you recall that
11 testimony yesterday?

12 A. Yes.

13 MR. BECK: Your Honor, at this time, the
14 United States moves to admit Government's Exhibit 40
15 and 40A, copies of which I provided to Ms. Bhalla.
16 And they are the unenhanced for Exhibit 40, and the
17 enhanced Exhibit 40A, recordings of the conversation
18 from which this transcript is taken.

19 THE COURT: Any objection, Ms. Bhalla?

20 MS. BHALLA: No objection for purposes of
21 this hearing. There is something I would like to
22 point out, but I think I can do that in closing
23 arguments, Your Honor.

24 THE COURT: Anybody else have any
25 objection?

1 All right, Government's Exhibit 40 and 40A
2 will be admitted into evidence.

3 Q. Looking over this transcript yesterday --
4 had you reviewed this transcript before yesterday?

5 A. Yes.

6 Q. Is it fair to say that there is a few --
7 that there is a fair amount of unintelligibles in
8 this transcript?

9 A. Yes.

10 Q. Do you know whether Mr. Cordova was
11 recording Mr. Perez person-to-person, or how were
12 they recording each other?

13 A. Person-to-person; they're separated by a
14 prison wall, speaking through an air vent.

15 Q. Do you know if Mr. Cordova was recording
16 Mr. Perez through that air vent?

17 MS. BHALLA: Objection, speculation. He
18 wasn't present for that, Your Honor. That testimony
19 was elicited from Mr. Cordova yesterday.

20 THE COURT: Well, ask him if he knows. If
21 he says yes, then we'll listen to his answer. It's a
22 yes-no question. Do you know?

23 A. Yes.

24 Q. How do you know that?

25 A. Based on Mr. Cordova telling me that.

1 Q. What did he tell you?

2 MS. BHALLA: Objection, Your Honor.

3 THE COURT: Well, I can hear what he said.

4 It might differ. Overruled.

5 A. Mr. Cordova explained to me that he got Mr.
6 Perez to talk to him through the vents and that he
7 recorded it.

8 Q. Have you spoken with a number of SNM
9 members?

10 A. Yes.

11 Q. How many SNM members would you say you've
12 spoken with?

13 A. Somewhere between 50 and 100.

14 Q. And in conversations with SNM members,
15 generally, do you understand every word that they
16 say?

17 A. No.

18 Q. And I want to go back to sort of the
19 beginning of conversing with SNM members. Did you
20 have a difficult time maybe understanding maybe every
21 word they say?

22 A. Yes.

23 Q. Why is that?

24 A. They have their own language or phrases
25 that I hadn't heard before.

1 Q. Yesterday, when I asked you about Mr.
2 Herrera's -- what you learned from listening to his
3 voice here -- I think, did you say that, in your
4 opinion, he was under the influence of any drugs or
5 narcotics during these conversations?

6 A. I said that I -- it was my opinion that he
7 was not.

8 Q. And when you listened specifically for
9 whether you thought that he was under the influence
10 of drugs or narcotics, did you listen to the
11 recordings or did you read the transcripts?

12 A. Both.

13 Q. And when you listened for whether he was
14 under the influence of narcotics, did you rely
15 primarily on listening to the recordings, or in
16 reading the transcripts?

17 A. Primarily on listening to the recordings.

18 MR. BECK: Your Honor, just as sort of a
19 housecleaning matter, at this time the United States
20 would move -- moves for the admission of Government's
21 Exhibit 41 and 41A, which are respectively the
22 recording of the conversation and the enhanced
23 recording of the conversation, the transcript for
24 which was admitted yesterday as Carlos Herrera, CH-C.

25 THE COURT: All right. Any objection to

1 those? All right. Government's Exhibits 41 and 41A
2 will be admitted into evidence.

3 Q. I believe you discussed with Ms. Jacks the
4 cooperators being housed together in L pod?

5 A. Yes.

6 Q. What direction did you give to NMCD to
7 direct them to house the cooperators together?

8 A. None.

9 Q. It sounds like you think they could have
10 talked about this case together while they were
11 housed together?

12 A. They could have.

13 Q. Did you take statements from each of these
14 cooperators before they went into housing in L pod?

15 A. I have a list of who I think was there.
16 I'll just look at that real quick.

17 Q. You may.

18 A. Yes, I did.

19 Q. And were those statements reflected in a
20 report that you or someone else later memorialized?

21 A. Yes.

22 MR. BECK: May I have a moment, Your Honor?

23 THE COURT: You may.

24 MR. BECK: Nothing further, Your Honor.

25 Pass the witness.

1 THE COURT: Thank you, Mr. Beck.
2 All right. Mr. Acee, you may step down.

3 Did you have something, Mr. Villa?

4 MR. VILLA: Just a brief recross on one
5 exhibit that was admitted from the previous hearings,
6 Government's Exhibit 16.

7 THE COURT: Go ahead, Mr. Villa.

8 MR. VILLA: Thank you, Your Honor.

9 EXAMINATION

10 BY MR. VILLA:

11 Q. Good morning, Agent Acee.

12 A. Good morning.

13 Q. So Exhibit 16 was the seventh, if you will,
14 statement of Mr. Perez to Mr. Cordova that we
15 overlooked yesterday?

16 A. Yes.

17 Q. And I'm going to show you Exhibit RP-C.
18 Are you able to tell me which one of these recordings
19 is reflected in the transcript of Exhibit 16?

20 A. Can you slide it down? Can I look at the
21 front page of the transcript?

22 Q. Oh, the transcript, sure.

23 A. No, I can't.

24 Q. And is that true with respect to the other
25 exhibits that were admitted yesterday?

1 A. Some of the transcripts -- no, because some
2 of the transcripts list the serial number of the
3 device used, and then they're in sequential order, so
4 it will say dash 001, or 004, so I think we could put
5 them in order on those transcripts.

6 Q. But for this particular one, you cannot?

7 A. No, sir.

8 MR. VILLA: That's all I have.

9 THE COURT: Thank you, Mr. Villa.

10 Mr. Beck, do you have any redirect?

11 MR. BECK: No, Your Honor.

12 THE COURT: All right. Mr. Acee, you may
13 step down. Thank you for your testimony.

14 All right. Does the Government have
15 further witnesses or evidence on the suppression
16 motion?

17 MS. ARMIJO: Yes, Your Honor. The United
18 States will call Jerry Roark.

19 THE COURT: Mr. Roark, if you'll come up
20 and stand on the witness box on my right, your left.
21 Before you're seated, my courtroom deputy, Ms.
22 Standridge, will swear you in.

23
24
25

1 JERRY ROARK,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. State and
6 spell your name for the record.

7 THE WITNESS: Jerry Roark, J-E-R-R-Y; last
8 name R-O-A-R-K.

9 THE COURT: Mr. Roark. Ms. Armijo.

10 MS. ARMIJO: Thank you, Your Honor.

11 BY MS. ARMIJO:

12 Q. Where Roark, where are you employed?

13 A. The New Mexico Corrections Department.

14 Q. When did you start with Corrections?

15 A. In 1989.

16 Q. And in what capacity?

17 A. I started as a correctional officer.

18 Q. And what different capacities -- what's
19 your current title?

20 A. My current title is Deputy Secretary of
21 Operations.

22 Q. And who is your -- how many supervisors do
23 you have?

24 A. I have one supervisor.

25 Q. And who is that?

1 A. The Secretary of Corrections.

2 Q. Okay. So is it fair to say that only the
3 Secretary of Corrections is above you?

4 A. Yes, ma'am.

5 Q. Now, what positions have you held
6 throughout the years since starting as a correctional
7 officer?

8 A. I went through the ranks of the custody
9 series. I was a sergeant, lieutenant, captain,
10 major. I spent a little bit of time as a
11 classification officer. And I was also a Deputy
12 Warden. I then became the Director of Adult Prisons,
13 and then this position.

14 Q. And how long have you been in your current
15 position?

16 A. About six months.

17 Q. Prior to that, what was your position?

18 A. Director of Adult Prisons.

19 Q. And as Director of Adult Prisons, what were
20 your duties?

21 A. I oversaw the 11 prison facilities within
22 the State of New Mexico.

23 Q. And when were you the Director of Adult
24 Prisons, approximately?

25 A. From October 2011, till June of this year.

1 Q. Now, in your capacity in working with the
2 Corrections Department, are you aware of what an STG
3 is?

4 A. Yes, ma'am.

5 Q. What is an STG?

6 A. It's a Security Threat Group.

7 Q. And are you familiar with Sindicato de
8 Nuevo Mexico?

9 A. Yes, ma'am.

10 Q. And what is that?

11 A. It's a Security Threat Group within the
12 State of New Mexico.

13 Q. Now, let's go over a little bit about
14 classifications. Are you familiar with the different
15 classifications that New Mexico Corrections
16 Department has for inmates?

17 A. Yes, ma'am.

18 Q. Okay. Tell us a little bit about that.

19 A. Well, we have a scoring system that scores
20 inmates based on various things, based on various
21 criteria. So they can score anywhere from Level 1 to
22 Level 4 points.

23 Q. Okay. And which is the lowest security?

24 A. Level 1 would be the lowest security. It's
25 the minimum security. And then each -- Level 2 would

1 be, like, a minimum restrict -- it's a little fewer
2 privileges than a minimum. Then the Level 3 is like
3 medium security. And Level 4 is what we usually, a
4 lot of times, just call closed custody.

5 Q. So would Level 4 be your highest
6 classification?

7 A. It is.

8 Q. And now, have you heard people use the
9 terms before Level 5 or Level 6?

10 A. Yes, ma'am.

11 Q. Is that really a correct term?

12 A. Well, it is a correct term. A lot of
13 people use it as a classification term. Level 6 and
14 Level 5 really was designed to be a program. Inmates
15 who engaged in misconduct or had security issues, we
16 couldn't put them in a general population, at that
17 point they were put in Level 6. And Level 5 is
18 actually a step-down from Level 6 to prepare them to
19 go back into general population.

20 Q. Is it an actual classification or is it
21 more programming?

22 A. Well, it's a secure environment. No one
23 scores Level 6 points. You have to engage in --
24 there has to be some either behavior nexus, or some
25 sort of threat to security nexus in order to be

1 placed into Level 6.

2 Q. Okay. And so, in general, the highest you
3 can go is 4, unless there is some other sort of
4 special consideration that would bump you up to 6; is
5 that right?

6 A. As far as getting points on your scoring
7 instrument, yes, it's Level 4.

8 Q. Okay. So now, what are the things that can
9 happen for someone to -- and how would you refer to
10 it? I want to use the terms that you would refer to
11 it. Would it be Level 6 or would it be some other
12 term?

13 A. It depends on the time frame. In July of
14 2015, we changed our policies, and we refer to Level
15 6 now as things like predatory behavior management
16 program, restrictive housing. So we've changed the
17 terminology.

18 Q. Okay. So let's go to -- and when was that
19 change?

20 A. July of 2015.

21 Q. All right. So let's go to 2014, the
22 beginning of 2014. What sort of system or
23 classifications did you have?

24 A. We still have Level 5 and Level 6 at that
25 time.

1 Q. Now, in regard to STGs, was there any sort
2 of consideration as far as classification for
3 somebody who was either suspected or validated member
4 of an STG?

5 A. Yes, ma'am. If you're a member of the
6 Security Threat Group, you can even score below, you
7 were automatically overridden to Level 4.

8 Q. And why is that?

9 A. Because we considered membership in a
10 Security Threat Group to undermine our ability to
11 keep other inmates safe.

12 Q. So was it a threat to the institution?

13 A. It was a threat to the institution and a
14 threat to particular -- to other inmates.

15 Q. And so, in 2014 -- and has it changed since
16 then, as far as classification, if you are either
17 validated or a suspected member of an STG? Is it
18 still an automatic 4?

19 A. Yes, ma'am. Nothing has changed on that.

20 Q. So with the security threat groups, what
21 sort of things did you do to try and manage them?
22 And I'm going to be specific, in about the end of
23 December 2013, early 2014.

24 A. Yes, ma'am. In December of '13, we changed
25 the Level 4 policy. At one time, inmates who were

1 Level 4 all got the same privileges. We decided at
2 that point that there were certain Level 4 inmates,
3 including members of security threat groups, and
4 those also who have a history of escaping from a
5 secure perimeter, we decided that they were never
6 going to leave Level 4, so we wanted to give them
7 additional privileges. So we changed the privilege
8 matrix of Level 4, and we developed a Tier 1 and a
9 Tier 2 privilege system.

10 Q. Okay. So at that point in time -- and
11 we're talking December 2013 -- Level 4 was divided up
12 into two different tiers?

13 A. Yes, ma'am.

14 Q. And I'm going to hand you -- what exhibit
15 number are we on?

16 MR. BECK: We're on 42.

17 MS. ARMIJO: -- what will be marked as
18 Exhibit Number 42. Your Honor, I'm going to move for
19 the admission of Government's Exhibit 42, which is a
20 Level 4, Table of Services.

21 THE COURT: Any objection from the
22 defendants?

23 MS. FOX-YOUNG: No objection, Your Honor.

24 MS. BHALLA: No, Your Honor. Although we
25 would like to see it.

1 THE COURT: All right. Government's
2 Exhibit 42 will be admitted into evidence.

3 Q. And I'm showing a table of services that
4 said Level 4. Are you familiar with this document?

5 A. Yes, ma'am.

6 Q. And when did this -- and I believe it talks
7 about Tier 1 and Tier 2. Is that consistent with the
8 testimony you were just giving about there being two
9 tier systems in Level 4?

10 A. Yes, ma'am.

11 Q. So when did these changes start being
12 implemented?

13 A. December of 2013.

14 Q. And is this current today?

15 A. Yes, ma'am, it is.

16 Q. So I believe you were talking about Tier 2
17 specifically. Were they given more privileges than
18 Tier 1?

19 A. It's the other way around. Tier 1 actually
20 got more privileges than Tier 2.

21 Q. Okay. So Tier 1 got more privileges than
22 Tier 2?

23 A. Yes, ma'am.

24 Q. And where were the security threat group
25 people in?

1 A. They were in Tier 1.

2 Q. Okay. And the reason again for the
3 distinction between the two?

4 Q. Well, we decided the Security Threat Group
5 members were -- because we were never able to place
6 them in a regular general population, that we would
7 start incrementally giving them more privileges. And
8 that was the first step towards doing that.

9 Q. And so what -- as of December of 2013, what
10 were the privileges in Level 4, Tier 1?

11 A. Well, I need to probably differentiate
12 between Tier 1 and Tier 2.

13 Q. Okay.

14 A. On things like visits, in the original
15 Level 4 policy, they were allowed three contact/
16 noncontact visits a month. We increased it to six
17 visits a month, three noncontact, three contact with
18 immediate family members. We increased tier time in
19 Tier 2. The original Level 4 in Tier 2 was two to
20 four hours a day. We made it a mandatory four hours
21 a day in Tier 1. Meals out of cell, it was two meals
22 out of the cell in the original Level 4. In the new
23 tier system, Tier 1 got three meals out of their cell
24 every day.

25 And I think we made one other change. The

1 religious ceremonies, there were no group religious
2 ceremonies in the original Level 4, except for a
3 sweat lodge, because of some state statute issues.

4 We gave one group recreation a month in
5 Tier 1.

6 Q. And where was SNM -- where was the general
7 population of SNM members being held at that time?

8 A. The majority of them were at Southern New
9 Mexico Correctional Facility.

10 Q. And who made the decision for that? I
11 mean, I should say, why were they being held down at
12 Southern?

13 A. That's where they had been when I got the
14 job. And there was no need to move them. We just
15 had them isolated there.

16 Q. Now, early in 2014, did you have an
17 opportunity to meet with someone in reference to SNM
18 and possible changes with them? Let me just be more
19 specific. Did you have an opportunity to meet with
20 Anthony Baca?

21 A. I did.

22 Q. And who was Anthony Baca?

23 A. He was a member of the SNM.

24 Q. And what was your understanding of his
25 position?

1 A. The majority of our STIUS thought he was in
2 a leadership position within the SNM.

3 Q. And why did you meet with him?

4 A. I was debating whether or not I wanted to
5 send him back to Southern New Mexico Correctional
6 Facility.

7 Q. Where was he being housed at that time?

8 A. The Penitentiary of New Mexico, North
9 facility.

10 Q. And what sort of -- at PNM, what sort of
11 classifications did they have there?

12 A. He was in the Level 6 facility.

13 Q. And so tell us about the meeting with Mr.
14 Baca.

15 A. Well, I met with Mr. Baca, and asked him
16 what he thought about going back to Southern. And he
17 told me that he had enough influence that he could
18 keep it quiet. And I also asked him about whether --
19 that I appreciated him keeping it quiet, but I also
20 asked him about recruiting for the SNM. And he would
21 not answer that question.

22 Q. Now, why was it that you had a conversation
23 with Mr. Baca? Was there previous -- had you had
24 success with another STG group?

25 A. I did, with the Los Carnales.

1 Q. And what was that?

2 A. Well, I had spoke to them about giving them
3 increased privileges, and allowing them increased
4 privileges, with some guarantees that they would no
5 longer be in the business of recruiting. And they
6 actually agreed to that.

7 Q. And did Mr. Baca agree to that same
8 condition when you met with him?

9 A. He just wouldn't answer.

10 Q. And what did you take that to mean?

11 A. I took that to mean that he wasn't going to
12 commit to that kind of a promise, that the answer was
13 no.

14 Q. And based on that, what did you decide to
15 do or not to do?

16 A. Well, I just thought the answer was no.
17 But I did do a videoconference with STIU, because I
18 wanted to kind of get another opinion, to make sure
19 my kind of gut reaction was right.

20 Q. And what decision did you make after that?

21 A. I decided he wasn't going back to Southern
22 New Mexico Correctional Facility.

23 Q. Did you, at some point after that meeting,
24 get a letter addressed to you from Mr. Baca?

25 A. I did, in early February.

1 Q. And was your meeting before that letter?

2 A. My meeting with Mr. Baca was. But my
3 meeting with STIU was after I got the letter.

4 Q. So even after meeting with Mr. Baca, there
5 were no changes made as far as classification or
6 programming with SNM members?

7 A. No, not at all.

8 Q. Did something happen on March 7th of 2014?

9 A. Yes, ma'am.

10 Q. What happened?

11 A. Javier Molina was murdered.

12 Q. And based upon that, what decision did you
13 make as far as SNM Gang members?

14 A. At that moment the decision was made to
15 lock down all SNM members in the State of New Mexico.

16 Q. And did you do so? Was that your decision?

17 A. I did consult with the Secretary and Deputy
18 Secretary. But yes, I mean, ultimately, it was my
19 decision.

20 Q. So what did that entail?

21 A. That entails inmates, you know, are in
22 their cell. They don't have any group activity. It
23 requires investigation, searches of cells,
24 interviews, going through their property. Just
25 various things happen in a lockdown, including

1 rephotographing inmates, updating emergency lists,
2 updating tattoo lists, all that kind of thing.

3 Q. And did that happen immediately after the
4 Molina murder?

5 A. The process began immediately after.

6 Q. Now, what sort of -- have you been doing
7 anything before then, before March 7, as far as
8 programming with SNM -- or what was their situation?

9 A. Well, again, we were -- we divided Level 4
10 into Tier 1 and Tier 2, with the hope that we were
11 going to increase programming for the SNM.

12 Q. And so then, after March 7, you had a
13 lockdown?

14 A. We did.

15 Q. Now, were people moved around?

16 A. Yes, ma'am.

17 Q. And by "people," I mean SNM members.

18 A. Yes, ma'am.

19 Q. And what did you do in general?

20 A. In general, we decided that some of the SNM
21 were such a threat to security that we felt they
22 needed to be in a facility that was designed and
23 built for maximum security, or higher security
24 inmates. So we moved several of them to the PNM
25 North facility.

1 Q. Did you move any of them out of state?

2 A. We did.

3 Q. Who did you move out of state?

4 A. We moved Daniel Sanchez, Archie Varela, and
5 Anthony Baca out of state.

6 Q. And was that as a result of the Molina
7 murder?

8 A. Yes, ma'am.

9 Q. Now, after moving people -- when you say to
10 the North, do you mean the north facility, or to PNM?
11 I should clarify, is the north facility part of PNM?

12 A. Yes, ma'am.

13 Q. And how many facilities are at PNM?

14 A. There are three separate facilities.

15 Q. And what is the name for those facilities?

16 A. There is the North facility, which also is
17 called the Level 6 at that time. The South facility,
18 which is called -- at that time was called Level 5.
19 And then there is the Penitentiary of New Mexico,
20 Level 2.

21 Q. Now, so after the Molina murder, what did
22 you do as far as classifications and programming, if
23 anything, for SNM members? Let me rephrase it. Did
24 they stay on lockdown until today, all of them?

25 A. They're not on lockdown anymore today. But

1 yes, we had a prolonged step-down for our lockdown.

2 Q. Okay. Explain what a step-down is.

3 A. A step-down is where we gradually give
4 privileges back to the inmates after a lockdown.

5 Q. Okay. And so did you start that process?

6 A. We -- yes, ma'am, we did start that
7 process.

8 Q. When did the stepping down process start,
9 if you can recall?

10 A. If I'd be able to look at my notes, ma'am.

11 Q. Okay. Do you have notes there to refresh
12 your recollection?

13 A. I do.

14 Q. And during cross-examination, do you have
15 any problem letting the defense look at those notes?

16 A. Absolutely not.

17 Q. And I don't want you to read from your
18 notes. If you can look at your notes to refresh your
19 recollection and then testify.

20 A. Yes, ma'am, I can.

21 So as soon as the murder, we did lock them
22 all down, and we kept them on lockdown, with nothing
23 but showers every 72 hours until late in March,
24 around March 26. And then we allowed them to, in
25 addition to showers, we began giving them recreation

1 five days a week.

2 Q. So they started getting recreation March
3 26, did you say?

4 A. That's correct.

5 Q. And would that be in 2014?

6 A. Yes, ma'am, 2014.

7 Q. Okay. And then what additional stepdowns
8 occurred?

9 A. We incrementally started stepping them down
10 on April 3 of 2014. Instead of showers every 72
11 hours, we gave them three showers a week, in addition
12 to the five days of recreation. And then --

13 Q. And then what, if you can recall?

14 A. Over time, we started adding additional
15 canteen. We started adding additional visits. And
16 we added visits. We added phone calls. We just were
17 on a very slow, methodical step-down for the
18 lockdown.

19 Q. Was something going to happen in July of
20 2015, and did you take steps to notify members about
21 a change that you were going to make?

22 A. Yes, ma'am. At that time, we decided, in
23 July of 2015, we were ready to resume normal
24 activities with the SNM. And we were ready to go
25 back to the tier process within Level 4. At that

1 point, we conducted what we call townhalls with the
2 SNM, to let them know that we were going to restore
3 them back to normal.

4 Q. So tell us how the townhalls work?

5 A. Well, typically a townhall is we just call
6 all the inmates into individual pods. It depends on
7 how the Warden likes to do it. Different wardens
8 like to get them all into the gym. Some like to go
9 pod to pod. But they went, and actually just kind of
10 talked to the inmates, and tell them: This is the
11 issues, we're going to restore -- and we call them
12 townhalls, because they're like a townhall. At that
13 point we allow some dialogue with the inmates.

14 Q. So if the inmates have questions of you,
15 you'll answer the questions?

16 A. A warden will typically do that, yes,
17 ma'am.

18 Q. Okay. And did you have townhalls with SNM
19 members about increasing their privileges?

20 A. Yes, there were townhalls. But it wasn't
21 me. It was wardens at the facility that did it.

22 Q. Was it at your direction?

23 A. Yes, ma'am.

24 Q. Now, are you aware of an incident that
25 occurred that kind of changed what you had been

1 planning on doing in July of 2015?

2 A. Yes, ma'am. On July 13 of 2015, three days
3 after we finished the townhalls, and we began to lift
4 off our lockdown and resume normal, Julian Romero was
5 assaulted.

6 Q. And who is Julian Romero?

7 A. He's a member of the Security Threat Group,
8 SNM.

9 Q. And based upon the investigation and your
10 understanding of what the motive was for that, did
11 you take any more steps to change what was going to
12 be an increase of privileges?

13 A. Yes, ma'am. We began to -- we locked them
14 down again.

15 Q. So after the Julian Romero assault
16 lockdown -- SNM went back into lockdown?

17 A. Yes, ma'am.

18 Q. And that would have been July of 2015?

19 A. That's correct.

20 Q. Now, also in 2015, in the summer of 2015,
21 were you aware of whether or not there was an ongoing
22 investigation that had commenced with the FBI and
23 members of Corrections into the SNM?

24 A. Yes, ma'am.

25 Q. Were you an active part of that

1 investigation, or was that left to other people in
2 Corrections?

3 A. It was left to other people in Corrections.

4 Q. But you were aware of it?

5 A. Yes, ma'am, I was.

6 Q. Do you know -- and if you don't know,
7 that's fine -- but do you know what started that
8 investigation?

9 A. Yes, ma'am. It was because of threats to
10 the safety of Secretary Marcantel and some of the
11 STIU members.

12 Q. Now, I'm going to fast-forward. And were
13 you aware of the impending indictment in this case
14 and the initial round-up in December of 2015?

15 A. Yes, ma'am, I was aware of that.

16 Q. And up until that time, what was the
17 status, in December of 2015, of SNM members? How
18 were they being held?

19 A. They were still on lockdown.

20 Q. And why were they still on lockdown?

21 A. Because of the -- because we had concerns
22 for their safety. We didn't know who was going to be
23 a victim of violence next.

24 Q. Okay. When you say you didn't know who
25 would be a victim of violence next, do you mean other

1 SNM members?

2 A. Yes, other SNM members.

3 Q. Now, fast-forwarding a little bit to
4 February of 2016, is that after the first initial
5 round-up that was done by the federal government?

6 A. Yes, ma'am.

7 Q. And what was the situation with the SNM at
8 that time?

9 A. We decided that it was time to start
10 resuming normal. And at that point we had a -- in
11 addition to recreation and showers and visits and
12 phone calls, we decided to add tier time to their
13 privileges.

14 MS. ARMIJO: Your Honor, the United States
15 would move for admission of 43 through 45 into
16 evidence, which is Offender's Physical Location
17 History. I believe at least a few of these are
18 attached to my response.

19 THE COURT: All right. Any objection from
20 the defendants?

21 MS. BHALLA: None from Mr. Herrera, Your
22 Honor.

23 MS. DUNCAN: I would ask, offender
24 histories for who?

25 MS. ARMIJO: For Rudy Perez, Carlos

1 Herrera, and Billy Cordova.

2 MS. DUNCAN: No objection for this hearing.

3 THE COURT: All right. Not hearing any
4 objection, Government's Exhibits 43, 44, and 45 will
5 be admitted into evidence.

6 Ms. Armijo.

7 Q. And Mr. Roark, are you familiar with --
8 first, I'm showing you Exhibit 43 -- are you familiar
9 with this item?

10 A. I am.

11 Q. And can you tell us what -- and this one
12 says, "Offender Physical Location History for Perez,
13 Rudy Lee." Can you tell us what that is?

14 A. Yes, that's a history of the inmate's
15 location within NMCD, and it's taken off of our
16 Criminal Management Information System.

17 Q. And then I'm showing Exhibit 44. Who this
18 is a history of?

19 A. It's Carlos Herrera.

20 Q. And to be fair, are these just the first
21 pages, which would include the year 2016, for them?

22 A. Yeah, it's -- the last date on these are
23 April 2016.

24 Q. All right. And then I'm showing Exhibit
25 45. Who is that an offender location for?

1 A. Billy Cordova.

2 Q. Now, in reference to -- first, let's start
3 with -- have you had an opportunity to compare the
4 Billy Cordova offender location in comparison to --
5 and I can put it right up -- first, let me start --
6 which is 45, to Exhibit 43. And specifically I'm
7 going to point out on Exhibit 45, there, towards the
8 top it says, "Next to Perez." And it has a location
9 for him on January 21st of 2016 to February 9th of
10 2016. Where is that location? N 3A Q 102 S?

11 A. That's the Penitentiary of New Mexico North
12 Facility, housing unit 3A, Q pod and the cell is 102.

13 Q. Okay. And then I'm showing the Rudy Perez
14 one. That says, 10/20/2015 to 4/18/2016. It says N
15 3A, Q 101 S. Where is that?

16 A. Again, that's the North facility, housing
17 unit 3A, Q pod, and the cell is 101.

18 Q. And so is it fair to say then that Mr.
19 Cordova was next to Mr. Perez from January 21st of
20 2016 to February 9th of 2016?

21 A. Yes, ma'am.

22 Q. And then moving along to Mr. Herrera's,
23 which is Exhibit 44. On the first line -- or on the
24 first -- I guess it's the second yellow highlighted
25 line underneath the start date time, it says

1 2/16/2016 to 4/20/2016. And the location is S 2A L
2 101 S. Where is that located?

3 A. That's the Penitentiary of New Mexico,
4 South facility, housing unit 2A, 1 pod, and the cell
5 is 101.

6 Q. And would that be Level 4?

7 A. That would be where we housed the Level 4
8 SNM, yes.

9 Q. And then, looking at Mr. Cordova's, does it
10 look like he was there 2/16/2016 through March 18th
11 of 2016?

12 A. Yes, ma'am.

13 Q. And would those two cells, then, would he
14 have been next to him?

15 A. Yes, ma'am, he was.

16 Q. Now, in reference to Mr. Perez, what kind
17 of cell is that, the N 3A, Q 101 S?

18 A. That cell is in a unit that has handicapped
19 access.

20 Q. And do you know why he was placed there?

21 A. Because he has a walker, and on occasion,
22 he uses a wheelchair.

23 Q. Is there -- do you have a handicap cell in
24 the South facility?

25 A. No, ma'am, we didn't.

1 Q. And underneath that, it looks like he's at
2 another N 3B X 105 S. Is that also a handicapped
3 cell.

4 A. That's in a handicapped -- that's in a pod
5 that has handicapped access, yes, ma'am.

6 Q. And it looks like, again, on Exhibit 43
7 that, that when he was sent to PNM, on June 17 of
8 2015, he immediately went into the handicapped? Is
9 that what it appears? I'm looking at --

10 A. Well, he immediately went to that pod, yes,
11 ma'am.

12 Q. I should say to that handicap -- a pod that
13 had a handicapped cell?

14 A. Yes, ma'am.

15 Q. Now, when did you start lifting
16 restrictions again for SNM? The time period being
17 early 2016.

18 A. Well, we added tier time in February of
19 '16. We had already started removing restrictions in
20 terms of recreation and showers and visits and phone
21 calls. But we didn't add congregate activity until
22 February of 2016.

23 Q. So before then, you had already started
24 adding what other privileges before February of '16,
25 if you can recall?

1 A. I don't recall, ma'am.

2 Q. Okay. But you know that you did start
3 adding other privileges?

4 A. We did.

5 Q. And what kind of privileges in general
6 would those have been?

7 A. Recreation -- it would have been very
8 basic. It would have been recreation, showers --

9 Q. How about --

10 A. -- visits and phone calls.

11 Q. And was that part, as you referred to
12 earlier, the stepping down process?

13 A. Yes, ma'am.

14 Q. Now, when an inmate has -- the medical
15 records for an inmate, are those protected by HIPAA?

16 A. Yes, ma'am, they are.

17 Q. And would people -- on the investigative
18 side of New Mexico Corrections Department, would
19 people just -- would anybody have access to the
20 medical records, or are they kept by a different
21 entity?

22 A. They're kept by our medical vendor.

23 Q. Okay. So is that somebody even different
24 from Corrections? Do you have a special vendor for
25 medical?

1 A. That's right. We contract our medical
2 services to a vendor.

3 Q. So, for instance, is anybody able to, on
4 STIU, able to just go and pull up medical records?

5 A. No, ma'am, they can't.

6 Q. And are you aware of anybody in the
7 investigation of SNM, in 2016, or at any time,
8 getting medical records of Mr. Perez?

9 A. Not that I'm aware of.

10 Q. And would they even be able to?

11 A. Not unless the inmate signs a release form.

12 MS. ARMIJO: May I have a moment?

13 THE COURT: You may.

14 MS. ARMIJO: I pass the witness. Thank
15 you.

16 THE COURT: Thank you, Ms. Armijo.

17 Do the defendants have cross-examination of
18 Mr. Roark?

19 MS. FOX-YOUNG: Your Honor, yes. I think
20 it might be -- I don't know if the Court would like
21 to take a break now. I'm happy to begin for a few
22 minutes, if the Court would like, or --

23 THE COURT: Okay. We'll take our break.

24 Let me make a little bit better record here of what I
25 said about the black boxes this morning.

1 Billy Garcia doesn't have -- because he's
2 got abrasions on his wrist. Arturo Garcia has cuts
3 on his wrist. And Allen Patterson doesn't have it.
4 Those are the reasons for those three gentlemen not
5 to have theirs on there.

6 I guess, Mr. Adams, I guess as I sit here
7 and listen to this testimony, you know, I mean,
8 what's going through my head a little bit is every
9 time the prison sort of loosened up on the SNM Gang,
10 it seems like something happened. So y'all might
11 give that some thought. That's going through my head
12 as I listen to this testimony.

13 All right. We'll be in recess for about 15
14 minutes.

15 (The Court stood in recess.)

16 THE COURT: All right. We'll go back on
17 the record.

18 Mr. Roark, I'll remind you that you're
19 still under oath.

20 Ms. Fox-Young, if you wish to cross-examine
21 Mr. Roark, you may do so at this time

22 MS. FOX-YOUNG: Thank you, Your Honor.

23 THE COURT: Ms. Fox-Young.

24 MS. FOX-YOUNG: Just briefly, Your Honor.

25 During the break, Mr. Lowry asked the Government if

1 the defense could take a look at the notes that this
2 witness brought with him. And I'd like to move that
3 they be admitted. But first, I'd just like to make a
4 record as to what's contained here.

5 The Court will be familiar with the
6 critical incident review that was referenced in
7 testimony last week, that Corrections Department
8 didn't produce, the Government didn't produce,
9 although we requested it. There is something called
10 a critical incident review, from March 13, 2014,
11 included here.

12 I haven't had time, I haven't had an
13 opportunity, Your Honor, to review everything in
14 detail. But I'll tell the Court that it is full of
15 Rule 16 and Brady information. To begin with, there
16 are -- in this critical incident review, there are
17 numerous references to Timothy Martinez, a
18 cooperating defendant in this case, how he was acting
19 strange on the day of the murder, how he had
20 strangely left a pair of shoes behind in the
21 wheelchair program.

22 The Court heard from Ernie Holguin last
23 week -- apparently, Ernie Holguin as part of this
24 review said that Mr. Martinez was acting strange.

25 There is a section titled, "Issues and

1 concerns," which notes that there was not a metal
2 detector in the wheelchair program or a frisker for
3 inmates when they left. It talks about lack of tool
4 control, talks about a complete lack of security
5 measures in place for the wheelchair program, and on
6 and on.

7 You know, I don't know what possible
8 explanation there is for the fact that this hadn't
9 been produced to the defense. It's full of Brady,
10 Giglio, and Rule 16.

11 I'm not going to read the entire document.
12 That is one of the documents. There is also a memo
13 dated February 17, 2014, from Mr. Roark to the Warden
14 at Southern, and Deputy Wardens, involving the SNM.
15 It talks about downgrading Los Carnales, talks about
16 SNM Level 4. Another memo to Mr. Myers -- who has
17 been present in this court for numerous hearings; I
18 believe he's present today -- dated May 17, 2016
19 regarding Anthony Baca. A document that was
20 introduced by the Government in the course of Mr.
21 Roark's direct testimony, Level 4 Table of Services.
22 And that's already in evidence. Some notes with a
23 timeline beginning March 7, 2014, with the Javier
24 Molina murder, running all the way through April 18
25 of 2016. I believe these are Mr. Roark's notes. A

1 memo from Mr. Roark, dated March 14, 2014, to Gregg
2 Marcantel, detailing background on the SNM. And
3 apparently Mr. Roark's own white paper and incident
4 summary describing the intelligence that the
5 Corrections Department and the Government gathered,
6 their response. A summary of their critical incident
7 review, vulnerabilities that they found with regard
8 to the prison, the correctional officers,
9 manipulative inmates. The fact that the wheelchair
10 program was not security friendly. The fact that
11 wheelchairs have many parts and components, making
12 accountability difficult. Lack of basic security
13 practices. Goes on and on, with more and more Brady.
14 A request for an immediate security upgrades request
15 by the Warden herself. She requested upgrades in
16 equipment and security to assist in the mission, to
17 manage high-risk inmates, and provide them
18 programming. Asked for metal detectors, asked for
19 video surveillance, asked for easier to access
20 control center, gun ports. It goes on.

21 Apparently, Mr. Roark in some way,
22 according to this document, assembled and gathered
23 information from a whole variety of sources that the
24 Government has had access to, and sent this on up to
25 Gregg Marcantel the week after the murder. This has

1 not been provided to the defense. And I don't know
2 what the explanation is for that, but we'd like that
3 entered into evidence now.

4 There is an email from Mr. Roark to then
5 Warden German Franco at PNM, I believe, Warden
6 Melissa Ortiz at Southern, Robert Stewart, and
7 copying Anthony Romero, regarding SNM recreation.
8 That's also from March 2014.

9 This packet includes numerous emails from
10 March 2014 regarding treatment of SNM members, or
11 alleged SNM members, following the assault,
12 monitoring behavior.

13 And I believe those are the categories. As
14 I represented to the Court, I haven't had an
15 opportunity to look at all this. I don't know if the
16 Court would like to hear from the Government on this
17 or wants to inquire as to why this hasn't been
18 produced. But I'm going to mark it as Defendant's
19 Rudy Perez Exhibit D. Pardon me, Your Honor, Exhibit
20 E.

21 THE COURT: Yeah, I think so.

22 MS. FOX-YOUNG: And we'd like a copy of it
23 for the defense to look at as well. We've got a
24 number of lawyers who want to review this for
25 questioning of Mr. Roark.

1 THE COURT: All right. Any objection to
2 Rudy Perez -- marking it as E -- and admitting it
3 into evidence, Ms. Armijo?

4 MS. ARMIJO: No objection.

5 THE COURT: All right. Anybody else have
6 any objection?

7 All right. Rudy Perez' Exhibit E will be
8 admitted into evidence.

9 EXAMINATION

10 BY MS. FOX-YOUNG:

11 Q. Good morning, Mr. Roark.

12 A. Good morning.

13 Q. This packet of documents that's been marked
14 as Exhibit E -- I can show it to you -- I'll
15 represent the Government handed this to us. Would
16 you like to take a look at it and tell me if this is
17 what you brought?

18 A. I can look at it quickly, ma'am. Yes,
19 ma'am.

20 Q. Mr. Roark, is this a file that you kept in
21 your office?

22 A. It was an electronic file.

23 Q. Where is that file kept?

24 A. It's on my computer in my office.

25 Q. Is there anything else in that file?

1 A. Yes, ma'am. I have SNM notes in that file.

2 Q. Is it an SNM file, or a Molina file, or
3 something else?

4 A. I have it labeled "SNM." So it mostly has
5 to do with the lockdown.

6 Q. When did you produce that file to the
7 prosecutors?

8 A. Yesterday, when I came down. I came down
9 with those notes that I reviewed.

10 Q. What time yesterday?

11 A. 3:30, 4:00. I'm sorry, I don't know the
12 exact time.

13 Q. And you gave it to the prosecutors when you
14 arrived?

15 A. Well, I had arrived earlier in the day, but
16 I left those notes in my hotel room.

17 Q. When did you give it to the prosecutors?

18 A. Yesterday afternoon.

19 Q. Sometime after 3:30?

20 A. Yes, ma'am.

21 Q. And did you give them anything else?

22 A. No, that was it.

23 Q. Did you author the critical incident review
24 that you brought with you, dated 3/13/2014?

25 A. No, ma'am, I did not.

1 Q. Who did?

2 A. Vistula Curry.

3 Q. Could you spell that first name?

4 A. V-I-S-T-U-L-A.

5 Q. How do you know that?

6 A. I assigned her to do the after action with
7 two other people. And I have known her for a while,
8 and I recognize that as her writing style.

9 Q. Oh, this is a typewritten report. I'm
10 going to show it here. This is the first page of
11 Defendant's Exhibit E, titled New Mexico Corrections
12 Department, Critical Incident Review, Dated
13 3/13/2014. Facility: Southern New Mexico
14 Correctional Facility. Ms. Curry authored this
15 report?

16 A. Yes, ma'am.

17 Q. And you said you knew that because you
18 recognized her writing. Do you see handwriting on
19 this document?

20 A. I don't. It has to do with writing style,
21 and the fact that she also used the policy form. A
22 lot of people, when they do critical incident reviews
23 and after actions, kind of use -- they kind of use a
24 memorandum form, because it's hard to get all the
25 information on the policy form.

1 Q. So you recognize Ms. Curry's distinctive
2 memo writing style?

3 A. And the fact that she used a policy form
4 instead of using a memorandum.

5 Q. Is she still employed by the Corrections
6 Department?

7 A. She is.

8 Q. Where is she now?

9 A. She's a Deputy Warden at Central New Mexico
10 Correctional Facility.

11 Q. And you assigned her the task, along with
12 two others, of doing the critical incident review at
13 Southern?

14 A. That's correct.

15 Q. And when did you make that assignment?

16 A. I probably made that assignment that Monday
17 morning after the incident.

18 Q. Do you know that?

19 A. I don't know for sure, but it would be
20 shortly after the incident.

21 Q. Okay. And on March 13, you received this
22 document back?

23 A. That's correct.

24 Q. Who else worked on it?

25 A. STIU Coordinator Adam Vigil and Captain

1 Adam Whitfield.

2 Q. How do you know that?

3 A. Those are the people I assigned to do it.

4 Q. You just remember?

5 A. In this case, I do, yes, ma'am.

6 Q. And what did you do when you received the
7 critical incident review back?

8 A. Well, I read it.

9 Q. Does it mention Rudy Perez anywhere, if you
10 recall?

11 A. I don't recall without seeing it, ma'am.

12 Q. And you brought with you a packet of emails
13 between you and other Corrections Department
14 employees; is that right?

15 A. That's correct.

16 Q. How did you assemble these emails?

17 A. They were in my folder on my desktop -- not
18 on my desktop, on my computer.

19 Q. What folder is that?

20 A. I believe it's titled "SNM."

21 Q. Is that within the Outlook program? Is
22 that within an email program?

23 A. No, ma'am. These were emails that were
24 saved onto the folder that's in my -- it's on my
25 computer -- I'm sorry, I'm not an IT person, so I'm

1 struggling with terms. But it's in my folder under
2 the Adult Prisons Division.

3 Q. This is the same folder that the critical
4 incident review was in?

5 A. They're all in the same folder, yes.

6 Q. Okay. All of these documents?

7 A. That's correct.

8 Q. So at the time you received or sent these
9 emails, in 2014 or 2015, as they may be dated, you
10 saved them and put them in the folder?

11 A. They were originally on my email. My
12 administrative assistant made it easier for me and
13 put them into a folder for me, yes.

14 Q. You asked your assistant to put everything
15 that was SNM-related in that folder?

16 A. Yes, ma'am.

17 Q. Okay. And is there anything else in the
18 folder that you did not bring with you today?

19 A. Yes, ma'am, there is other information in
20 the folder.

21 Q. I think you said there were some notes; is
22 that right?

23 A. Yes, ma'am. There is going to be some
24 notes in there, yes.

25 Q. Okay. I don't know why you wouldn't keep

1 it, but I'm going to ask you to preserve that folder.
2 If it hasn't already been produced to the Government,
3 we're going to ask for it. Or if it hasn't been
4 produced to us, we're going to ask for it.

5 A. Yes, ma'am. We created that folder for the
6 fact that we knew we were going to have IPRA
7 requests.

8 Q. Okay. And you knew that there might be
9 litigation?

10 A. Yes, ma'am.

11 Q. And one of the documents that you brought
12 with you is addressed to Mark Myers, Chief of Staff,
13 NMCD.

14 A. Yes, ma'am.

15 Q. Is he still Chief of Staff at NMCD?

16 A. He is.

17 Q. Do you know if Mr. Myers provided any SNM
18 documents to the prosecutors?

19 A. I don't know, ma'am.

20 Q. Have you talked to him about it?

21 A. I haven't talked to him about that.

22 Q. What, if anything, did you do in March of
23 2014, when you got this after action report back from
24 Ms. Curry?

25 A. I read the report. And I also -- I also

1 created a document for Secretary Marcantel.

2 Q. Okay. So the document titled, "White
3 paper, Sindicato de Nuevo Mexico," dated March 14,
4 2014, which is part of this exhibit -- I'm showing
5 you the first page of it -- from you to Gregg
6 Marcantel -- you authored?

7 A. Yes, ma'am.

8 Q. And you basically summarized the
9 information that was in the after action report for
10 purposes of this white paper?

11 A. It was more than just the white paper. It
12 was also based on some videoconferencing that we
13 had -- I had done with the Security Threat
14 Intelligence Unit.

15 Q. Tell me about that. When was that
16 videoconferencing done?

17 A. I don't know the exact dates, but it was
18 somewhere between March 7 and March 14.

19 Q. How do you know that?

20 A. Because we were having regular meetings
21 after the incident to determine what we were going to
22 do with SNM.

23 Q. Okay. These are STIU people who were
24 employed at Southern?

25 A. Well, not just Southern. I wanted input

1 from everyone that knew the STIU. So there -- were
2 on the conference call was STIU staff from Central
3 New Mexico Correctional Facility and the Penitentiary
4 of New Mexico.

5 Q. Do you remember who?

6 A. No, ma'am, I don't.

7 Q. These were Skype calls? Did you say
8 videoconference?

9 A. Videoconferencing, yes, ma'am.

10 Q. Okay. And you set them up?

11 A. I did.

12 Q. And so, through the course of those
13 videoconferences, you obtained some additional
14 information that wasn't in the after action review?

15 A. That's correct.

16 Q. Do you remember what?

17 A. Well, I'd have to look at the after action.
18 But some of the information was specific to
19 individual SNM members, on how information got down
20 there for the murder, and stuff like that.

21 Q. Okay. Do you remember if Ernie Holguin was
22 involved in those calls?

23 A. I don't remember him specifically, but he
24 was likely on the phone calls.

25 Q. Okay. And his feedback went into that

1 after action report?

2 A. It would have been all the STIU. He
3 probably didn't speak up, because it's usually -- on
4 the conference calls it's usually the coordinator
5 that speaks up in the conference calls.

6 Q. Okay. So you drafted this white paper, and
7 you sent it to Gregg Marcantel. What else did you do
8 in the days following the Molina murder?

9 A. I didn't really do anything. I mean, my
10 job is to just turn it over to the wardens and STIU,
11 and let them investigate.

12 Q. Did you meet with any prosecutors back
13 then, in 2014?

14 A. No, ma'am, I didn't.

15 Q. Did you draft any other documents after you
16 drafted this white paper?

17 A. I believe that's the last report I did on
18 this.

19 Q. Okay. And your report says that
20 intelligence efforts were ongoing, and you expected
21 significant additional information. Do you know
22 whether you received additional information and
23 further intelligence that wasn't included in your
24 white paper?

25 A. No, ma'am. At that point, the

1 investigation was turned over to STIU and other
2 investigators to conduct.

3 Q. Okay. Do you remember writing to Mr.
4 Marcantel that Inmate Perez' life was threatened in
5 the course of the events leading up to the murder?

6 A. I don't recall that. But if you can show
7 me, if it's in the white paper, I'm certainly willing
8 to look at it.

9 Q. If it's in the white paper, you wrote it?
10 I'll show you right here: "Inmate Perez' life was
11 threatened if he did not do this or told anyone about
12 it," do you see where it says that?

13 A. Yes, ma'am.

14 Q. Do you know how you knew that?

15 A. This was the initial information after the
16 incident, and that was gathered by STIU. And who
17 from STIU got that, I don't recall now.

18 Q. Okay. But you knew that there had been a
19 threat on Inmate Perez' life. What, if anything, did
20 you do to follow up on that threat?

21 A. Well, they were continuing to do
22 investigation. This was all preliminary and initial
23 information. So a lot of this hadn't been
24 corroborated. So this is what we initially thought.

25 Q. Okay. So you didn't know if any of this

1 was true?

2 A. Nothing was corroborated.

3 Q. Okay. The critical incident review that
4 you received talks about Tim Martinez, also known as
5 "Red," acting strangely on the day of the murder. Do
6 you remember that?

7 A. I do remember that.

8 Q. What, if anything, did you do to follow-up
9 on that intelligence?

10 A. Again, that was turned over to STIU and
11 other investigators who were in charge of that
12 investigation.

13 Q. So you don't know if anything else was done
14 to follow-up on that information?

15 A. I don't know what they asked, no.

16 Q. Okay. That was in the ballpark of STIU at
17 that point?

18 A. That's correct, ma'am.

19 Q. When is the first time that you talked to
20 the federal prosecutors about the Molina murder?

21 A. When they called me last week.

22 Q. What day?

23 A. Oh, I don't recall what day. Tuesday or
24 Wednesday, ma'am.

25 Q. Okay. They called you to tell you that

1 they were going to call you to testify in this
2 hearing?

3 A. Yes, ma'am.

4 Q. Okay. Did you ever talk to them before
5 that --

6 A. No.

7 Q. -- in 2015 or 2016 or 2017?

8 A. No, ma'am.

9 Q. Okay. Have you talked at all to Mr. Myers
10 about the Molina murder?

11 A. Just in passing, how things are going. But
12 that's all, ma'am.

13 Q. Just because you knew that he was involved
14 in the prosecution?

15 A. Yes, ma'am. And also, I needed some
16 updates to just kind of know what to do with SNM, in
17 terms of giving them privileges and stuff.

18 Q. Okay. Continue up until the present time.

19 A. Yes, ma'am.

20 Q. And have you talked to Agent Bryan Acee
21 about the Molina murder?

22 A. Yes, ma'am. At some point, I did have a
23 conversation with Agent Acee, but I don't recall what
24 it was about.

25 Q. Do you know when you talked to him?

1 A. Maybe a year ago.

2 Q. Where were you?

3 A. I was probably in Santa Fe, in my office.

4 Q. Did he come to see you?

5 A. No, ma'am. It was a phone call.

6 Q. Did he call you?

7 A. I believe I was asked to call him.

8 Q. Who asked you to call him?

9 A. Mr. Myers.

10 Q. Mr. Myers asked you to call Mr. Acee.

11 Why -- did he tell you why he wanted you to call him?

12 A. Actually, yes, ma'am. No one has asked me
13 this for a while, so I'm recollecting my memory.

14 Q. That's fine.

15 A. It had something to do with putting money
16 on the inmates' books.

17 Q. Which inmates?

18 A. Those who were cooperating with the
19 investigation.

20 Q. So Mr. Myers told you to call Mr. Acee to
21 discuss putting money on inmates' books?

22 A. No, that's not exactly right. It was how
23 the process works. If someone puts inmate money on
24 inmates' books, how that works.

25 Q. What did Mr. Myers tell you about making

1 the call? He told you he wanted you to call Acee,
2 and I think you're remembering why. Tell me why.

3 A. To explain how the whole process of putting
4 money on inmates' books works.

5 Q. Okay. And so then you did call Mr. Acee?

6 A. I did.

7 Q. And you explained to him how he could go
8 ahead and put money on inmates' books?

9 A. That's not exactly -- the conversation was
10 more how that works, instead of go ahead and do it, I
11 mean --

12 Q. Okay. What did you tell Mr. Acee?

13 A. I told him that the process works, that you
14 have to send in -- it usually works like this; you
15 send in money, you send in a money order, and it's
16 then placed -- it goes to the inmate accounts person
17 at the facility, and then at that point they debit
18 that, or they put that money into the inmates'
19 account.

20 Q. Okay.

21 A. It's a very simple process.

22 Q. And did he tell you he was going to go
23 ahead and do that?

24 A. No, ma'am, he didn't.

25 Q. What, if anything, did he tell you?

1 A. I don't know if he told me anything other
2 than: Thank you for the information, ma'am.

3 Q. Okay. Have you had any other conversations
4 with Mr. Acee?

5 A. No, ma'am.

6 Q. Have you had any other forms of
7 communication with Mr. Acee?

8 A. No, ma'am.

9 Q. What did you do to prepare to testify
10 today?

11 A. Mostly, I looked over those forms that you
12 have.

13 Q. The documents that you brought with you?

14 A. Yes, ma'am.

15 Q. Did you look at anything else?

16 A. I scanned over stuff, but that seemed like
17 the most relevant stuff, so --

18 Q. Okay. Is it fair to say you scanned over
19 everything in your SNM file, and then you pulled out
20 these documents because you thought they would
21 pertain to the subject matter?

22 A. I think that's fair, yes, ma'am.

23 Q. Okay. And did you also look at any New
24 Mexico Corrections Department policies? I know that
25 there is a portion of a policy contained in what you

1 brought. Did you look at any other policies in
2 preparation for your testimony?

3 A. Not -- part of my job is to look at
4 policies, so -- no, I didn't specifically look at
5 policies for those. But, yes, I review policies on a
6 regular basis, ma'am.

7 Q. You're very familiar with them, just by
8 virtue of your job?

9 A. Yes, ma'am.

10 Q. Did the Government -- did the prosecutors
11 ask you to review anything prior to your testimony?

12 A. Well -- they did. When we talked, we
13 talked about the privileges and stuff, so that's kind
14 of why I looked at the privileges, so of course I
15 didn't have that memorized.

16 Q. Oh, the SNM privileges?

17 A. Correct.

18 Q. Was it Ms. Armijo who called you?

19 A. It was.

20 Q. Did she ask you to bring anything with you?

21 A. She didn't.

22 Q. Did she ask you if you had an SNM file?

23 A. No, ma'am, she didn't.

24 Q. She's never asked you that?

25 A. I don't think she has, no, ma'am.

1 Q. Oh, had you talked to her ever before last
2 week?

3 A. No, ma'am, I haven't.

4 Q. I think you testified that you were at
5 some -- I know you've had a long career with the
6 Corrections Department -- at some point you were a
7 classification officer; is that right?

8 A. I was.

9 Q. And that was before you headed up the adult
10 corrections -- the Adult Prisons Division?

11 A. That's correct.

12 Q. How long were you a classification officer?

13 A. Not for very long; about nine months.

14 Q. And then, did you have another job in
15 between, before you ran adult prisons?

16 A. I did.

17 Q. What was that job?

18 A. Immediately before adult prisons, I was a
19 Deputy Warden.

20 Q. Okay. At which facility?

21 A. The Penitentiary North facility.

22 Q. How long?

23 A. About 10 months.

24 Q. Do you know what year that was?

25 A. I do. I got promoted in the summer of

1 2010.

2 Q. So sometime in 2011, you assumed
3 responsibilities as head of adult prisons?

4 A. I was asked to come over in April of 2011.

5 Q. Okay. And you remained in that position
6 until when?

7 A. Till May or June of this year.

8 Q. So from 2014 until this last summer, 2017,
9 you were heading up adult prisons?

10 A. Yes, ma'am.

11 Q. And where is your -- are you located at the
12 main office in Santa Fe?

13 A. Yes, ma'am, I am.

14 Q. Not at PNM?

15 A. Not at PNM.

16 Q. But you're very familiar with how things
17 work at PNM, how the Corrections Department runs that
18 facility?

19 A. Yes, ma'am.

20 Q. Can you tell me, is the entirety of PNM
21 North, is it comprised of segregation units?

22 A. We call them restrictive housing, but --

23 Q. You call them restrictive housing now,
24 right?

25 A. That's correct. Yes, we did have a period

1 of time where we had a general population type of
2 unit at PNM. We called it a Drug Suppression
3 Program. We had it there for about a year, year and
4 a half.

5 Q. When was that?

6 A. Beginning of 2016, and we moved it about
7 two months ago.

8 Q. Okay. Now, other than that, it's all
9 restrictive housing or segregation?

10 A. Yes, ma'am.

11 Q. Okay. I think you actually -- you prefer
12 to use the term Special Management; is that right?

13 A. No. Actually, that's an old term. It's
14 restrictive housing now.

15 Q. Now it's restrictive housing. Okay, in
16 2014, it was special management, right?

17 A. It was.

18 Q. Okay. What's the difference between
19 special management and restrictive housing?

20 A. Restrictive housing is a term coined by the
21 American Correctional Association, and the National
22 Institute of Corrections. It's kind of -- they're
23 just trying to get all states and all municipalities
24 and counties to use the same terminology, so we don't
25 have 50 different terms being used across the

1 country. So when we talk to each other, we know what
2 we're talking about.

3 Q. And it used to be called "solitary
4 confinement," right?

5 A. We never used that term. But yeah, some
6 states have used that in the past.

7 Q. Well, do you remember, in 2014, testifying
8 to a committee of the Legislature and, saying that
9 the Correctional Department is no longer using the
10 term "solitary confinement," instead, we now say
11 "special management"?

12 A. What year was that, ma'am? I'm sorry.

13 Q. 2014.

14 A. We were transitioning. I don't remember
15 saying that. I would have -- I don't know why I said
16 that. We would have -- we never used the term
17 "solitary confinement." We did use special
18 management, and we transitioned to using restrictive
19 housing. So I'm not sure why I said that.

20 Q. Okay. Well, whatever it's called, you'd
21 agreed with me, would you not, that solitary
22 confinement or special management or restrictive
23 housing has effects on inmates living under those
24 conditions; is that right?

25 A. Yes, ma'am.

1 Q. And what are those sorts of effects?

2 A. It does impact their mental health.

3 Q. In what ways?

4 A. In negative ways. Because you're isolating
5 their contact with other people.

6 Q. And it can make them confused?

7 A. I'm not a mental health professional. So I
8 know that from reading studies, it's related to
9 depression and stuff like that. So --

10 Q. Okay. You know from reading studies, and
11 you also know, because you worked in PNM for a pretty
12 long time, and you've worked in other facilities
13 where inmates are held in segregation, right?

14 A. Yes, ma'am.

15 Q. And so, have you observed depression in
16 inmates who are housed that way?

17 A. Yes, ma'am. They can become depressed,
18 or -- and, yes.

19 Q. Sometimes they don't know what time it is;
20 they become disoriented in some ways, do they not?

21 A. They can for periods of time, yes, ma'am.

22 Q. Only short periods?

23 A. Again, I'm not a mental health
24 professional. You're asking me from what I saw. And
25 I never experienced where someone -- I never had that

1 personal experience. I did see them have mental
2 health crises in short periods of time. I never saw
3 it where it --

4 Q. Okay. So you observed what you call mental
5 health crises for people who were held in seg. And I
6 understand you're not a mental health professional.
7 I'm not asking for mental health opinions, but I
8 appreciate that explanation. And so, is it fair to
9 say that housing inmates in segregation can have a
10 deleterious effect on somebody's mental health?

11 A. Yes. And again, it's like anything else,
12 it's dependent on that individual.

13 Q. It affects different people differently?

14 A. It does, correct.

15 Q. And it might matter how they are when they
16 go in, right?

17 A. Oh, yes, ma'am.

18 Q. So if they're in worse physical health when
19 they go in, would that have an impact on how
20 segregation affects them?

21 MS. ARMIJO: Objection, foundation.

22 Q. Just from your personal experience, and the
23 articles that you've read.

24 A. It could.

25 Q. Okay. And also --

1 THE COURT: I guess you probably need to
2 term all these questions what he has observed, and
3 from his experience. Because I think, if you keep
4 asking those questions that are more, I think,
5 appropriate to an expert, I'm going to have to
6 sustain the Government's objection.

7 So, if you wanted to ask him what he's
8 observed, I'll allow that. But probably, if you just
9 ask him open-ended questions that are more for a
10 psychologist, then I'll sustain the Government's
11 objections.

12 MS. FOX-YOUNG: Yes, Your Honor. And I'll
13 just note the witness did say that he had relied on
14 some, I think, papers and conferences, and he's done
15 outside work. But I'm going to move on, Judge.

16 Q. And so I understand that you're no longer
17 at PNM. Do you know if there has been made an effort
18 to reduce the time that inmates are held in special
19 management -- or I'm sorry, restrictive housing?

20 A. Yes, ma'am. Under the previous leadership,
21 we were told to reduce timeframes in restrictive
22 housing, and told to reduce the number of inmates in
23 restrictive housing.

24 Q. Okay. Which leadership was that?

25 A. Secretary Marcantel.

1 Q. Okay. And that was in 2014?

2 A. We began the process as early as 2013, yes,
3 ma'am.

4 Q. And why, if you know, was there a move to
5 reduce time that inmates would be held in restrictive
6 housing?

7 A. There is actually three reasons: One is
8 the mental health issues that you talked about. The
9 second is the cost issue, it costs more money to put
10 an inmate into restrictive housing, because it's more
11 staff intensive. And the third reason is access to
12 programming. It's just more difficult to get an
13 inmate to programming if they're in restrictive
14 housing.

15 Q. Okay. So you said that began in 2013, that
16 movement?

17 A. Yes, ma'am.

18 Q. And has it -- does it continue through the
19 present?

20 A. In terms of the percentages in segregation,
21 that's still the department philosophy. But we've
22 had an increase in violence and other incidents in
23 our prison, so we've -- and we've had some repeat
24 offenders that have had to go back to our restrictive
25 housing programs, so we've had to increase the times

1 for inmates.

2 Q. So back in 2014, the goal was to reduce
3 time in restrictive housing to 30 days, to a month;
4 is that right?

5 A. That's a difference, ma'am. That's for
6 disciplinary restrictive housing.

7 Q. Okay. That's just if you're there on
8 discipline?

9 A. That's correct.

10 Q. And tell me the difference. Why else might
11 you be in restrictive housing under the department's
12 policies?

13 A. Well, we need to put people in restrictive
14 housing to protect other inmates, and to protect the
15 public. So if you are engaged in a misconduct we
16 deem serious enough that we will put you in a
17 program. At that time it was called Level 6. It's
18 now called predatory management behavior program.
19 And it's designed, not for disciplinary reasons, it's
20 designed to give you programming to prepare you to go
21 back to general population.

22 Q. Is there a Corrections Department policy
23 that outlines the requirements for this predatory
24 management behavior program?

25 A. There is, ma'am.

1 Q. And which one is that?

2 A. I don't have the policy in front of me.

3 It's in Chapter 7.

4 Q. And that's one area of Level 6?

5 A. It's a new name for Level 6, to put it
6 simply.

7 Q. Okay. So today -- so in 2014, you called
8 Level 6, Level 6. Today you call it the predatory
9 management behavior program?

10 A. We did. And that's because Level 6 was a
11 very complex policy. And we wanted to simplify it.
12 And other reasons is because we just felt like we
13 needed to define exactly what inmates we wanted in
14 that program.

15 Q. Okay. And so, when did you change the name
16 of this program and make the other changes that
17 you've described?

18 A. It was July of 2015.

19 Q. Okay. Now, the Level 6 policy of governing
20 placement criteria and procedures, has that also been
21 changed?

22 A. It has. We don't have a Level 6 policy
23 right now.

24 Q. There is no Level 6 policy at all?

25 A. Not right now, ma'am.

1 Q. Okay. But in 2015, there was?

2 A. Until July of 2015, yes, ma'am.

3 MS. FOX-YOUNG: Mr. Roark -- we're on F, I
4 think, Your Honor -- I'm going to show you a document
5 I'm marking as Rudy Perez Exhibit F. Your Honor, I
6 move the admission of this exhibit. And I think the
7 Government --

8 MS. ARMIJO: No objection.

9 THE COURT: Anybody else have an objection?
10 All right. Defendant Rudy Perez' Exhibit F will be
11 admitted into evidence.

12 Q. Mr, Roark, do you know what this document
13 is?

14 A. I do.

15 Q. Okay. And it is a Level 5 and Level 6
16 placement criteria and procedures policy; is that
17 right?

18 A. That's correct.

19 Q. It looks to me like it was last reviewed or
20 revised in June of 2014?

21 A. That's correct.

22 Q. But it's your testimony that this is no
23 longer in effect today?

24 A. This is no longer in effect today.

25 Q. And what is the date that it stopped being

1 in effect?

2 A. It was July -- I don't remember the date --
3 it was July of 2015.

4 Q. Okay. And I'll represent to you that your
5 general counsel produced this document to us as a
6 document that was in effect, policy document that was
7 in effect, I believe, in the early part of 2015. And
8 so I think that's consistent with your understanding.
9 I don't have the exact date. But we both agree,
10 prior to July of 2015, it was in effect?

11 A. That's correct.

12 Q. Okay. And this document requires, does it
13 not, that if somebody -- if an inmate is housed in
14 Level 6, if they're to be housed there, they first
15 must be identified as a validated security threat
16 group member or a suspected STG member, or someone
17 associated with an STG. It goes on. Is that right?

18 A. That's one of the reasons.

19 Q. Okay. And there is actually a requirement,
20 if you look at the first page of this policy, that in
21 addition to that, the inmate must have a documented
22 history of institutional behavior that meets one of
23 the following criteria: Either acts of violence or
24 directing others to engage in violence. Is that
25 right? Or threatening or forcing other inmates,

1 staff, or members of the public, or directing others
2 to engage in threats or coercion, or involvement in
3 or directing others to engage in organized
4 unauthorized activity. It goes on.

5 So an inmate has to meet one of the
6 criteria from list C1 and list C2; is that right?

7 A. In order to be placed in a Level 6
8 placement, yes, ma'am.

9 Q. Or a Level 5, right?

10 A. No. Level 5, you can't be placed -- level
11 5 is a stepdown from Level 6, to prepare you to go
12 back to general population of some sort. You can't
13 get placed straight into Level 5 without going to
14 Level 6.

15 Q. Okay. However, if you're going to be
16 placed in Level 6, back at this time, until the
17 policy was no longer in effect, it was not enough
18 just to be a suspected STG member, a validated
19 member; there had to be an act of violence or a
20 credible threat or evidence of coercion of other
21 inmates or something else to hold you in Level 6; is
22 that right?

23 A. According to the policy, yes, ma'am.

24 Q. Why is this policy no longer in effect, do
25 you know?

1 A. Yes, ma'am. It had to do with all the
2 things -- some of the other things I talked about.
3 The policy was very long and confusing to read. So
4 we wanted to simplify the policy. The policy was
5 written in such a way that almost half our inmates at
6 the Level 6 were in there for protective custody
7 reasons. We thought that was a waste of resources.
8 And we wanted to cut down on the numbers in
9 restrictive housing. And we thought this policy was
10 written in such a way it was easy to put an inmate
11 into restrictive housing.

12 Q. Okay. And on the face of this policy that
13 was produced by your department several months ago,
14 it doesn't say it's no longer in effect, right? It
15 just has the effective date and the revised date? It
16 doesn't say it's no good anymore?

17 A. I'm not sure I understand the question,
18 ma'am.

19 Q. Just looking at this document, you can't
20 tell that it's no longer in effect. This is the
21 document that your department produced with regard to
22 criteria for Level 6?

23 A. That's right. There is no end date on it,
24 ma'am.

25 Q. Okay. And so we talked a little bit about

1 reducing time in restrictive housing in 2014. And
2 you recalled that, beginning in 2013, and certainly
3 going into 2014, and even to the present, it's the
4 department's philosophy, you want to reduce the time
5 that inmates are held in special management. Do you
6 know -- well -- and you recall that you did give
7 testimony to that effect in the summer of 2014, that
8 you were trying to reduce the time that inmates were
9 in special management?

10 A. Yes, ma'am.

11 Q. Okay. And you also recall that you have
12 explained in the past that a panel is to regularly
13 review the status of every inmate who is held in
14 restrictive housing?

15 A. That's correct. That's in the new policy,
16 yes.

17 Q. And that panel is supposed to determine if
18 there is a credible threat that requires the
19 continued use of restrictive housing, right?

20 A. That's correct.

21 Q. Okay. And you talked in your direct
22 examination -- I think you referred to your notes --
23 a timeline that you had created that detailed the
24 history of how SNM has been housed by the Department;
25 is that right?

1 A. No, ma'am. That timeline was the timeline
2 after the Molina murder.

3 Q. Okay. I'm showing you a document that is
4 part of Defendant's Exhibit E. And it says, "Primary
5 tasks," at the top; then it has some handwriting on
6 it?

7 A. Yes, ma'am.

8 Q. Did you write this writing?

9 A. Yes, ma'am.

10 Q. Okay. And I think you walked through this
11 timeline, and you explained to the Court that there
12 had been changes with regard to the way the
13 Corrections Department housed SNM members over the
14 years and months, since March 2014; is that right?

15 A. We hadn't really started changing until
16 December of 2013.

17 Q. Okay. But you talked about specific times.
18 You said that, in July of 2015 -- or June -- yeah,
19 July of 2015, the Department resumed normal
20 activities with regard to the SNM?

21 A. That was our plan, yes, ma'am.

22 Q. Okay. And then you said that that
23 subsequently changed?

24 A. Yes, ma'am.

25 Q. And that, again, in February 2016, the

1 Department started resuming normal activities?

2 A. To include tier time, yes, ma'am.

3 Q. Okay. But that hasn't changed since that
4 time?

5 A. Well, currently, we're resuming normal with
6 the SNM who are in Level 4, that are still living
7 with us.

8 Q. Okay. So the status quo hasn't changed
9 since February 2016, when you resumed normal
10 activities?

11 A. That's right. The tier process, the Level
12 4 matrix hasn't changed, ma'am.

13 Q. Okay. And was that February 1, 2016?

14 A. That's when we began to resume normal, yes.

15 Q. Are there documents that reflect that?

16 A. Just that email that you have.

17 Q. That's an email from whom to whom?

18 A. I believe it's from me to the wardens.

19 Q. Telling them, as of February 1, 2016, you'd
20 be resuming normal activities with regard to the SNM?

21 A. No. We began giving them tier time.

22 Q. Okay.

23 A. I believe it wasn't until April 18 that we
24 increased the tier time, and we started giving group
25 recreation.

1 Q. Okay. And so beginning February 1, 2016,
2 were there any individuals who were suspected SNM or
3 validated SNM who weren't given tier time?

4 A. Those that remained in -- those who
5 remained in -- who had been assigned to the predatory
6 behavior management program.

7 Q. Formerly PNM Level 6?

8 A. That's correct.

9 Q. Okay. And why weren't they given tier
10 time?

11 A. Because they had been assigned to the
12 program; because of some sort of misconduct they had
13 been involved in.

14 Q. They had been assigned there for
15 misconduct, and that's pursuant to the policy that
16 you and I just went over?

17 A. Or a similar such policy, yes, ma'am.

18 Q. Well, that was the policy that was in
19 effect, right? I thought there was no other policy
20 dealing with Level 6.

21 A. The PBMP policy replaced the Level 6. We
22 changed the name of the program.

23 Q. The PBMP policy?

24 A. Yes, ma'am.

25 Q. When did the PBMP policy take effect?

1 A. July of 2015.

2 Q. Okay. So placements in Level 6 prior to
3 July of 2015 were pursuant to the policy you and I
4 just went over?

5 A. Yes, ma'am.

6 Q. Subsequent disciplinary placements are
7 pursuant to the PBMP policy?

8 A. Yes, ma'am.

9 Q. Did you happen to bring the PBMP policy
10 with you?

11 A. No, ma'am, I did not.

12 Q. Are you familiar with Rudy Perez?

13 A. A little bit, yes, ma'am.

14 Q. How do you know him?

15 A. Through my years working in prisons. I
16 don't know --

17 Q. You don't know him personally?

18 A. No, ma'am.

19 Q. You never talked to him?

20 A. I may have.

21 Q. Okay. Have you ever been involved in
22 making a housing or classification decision about
23 Rudy Perez?

24 A. Not that I recall, no, ma'am.

25 Q. Okay. Are you aware that Rudy Perez was

1 housed at PNM North for a period of time?

2 A. I am aware of that.

3 Q. Do you know when that began?

4 A. Not without looking at the inmate locator
5 documents.

6 Q. You just remember that he was there?

7 A. I do.

8 Q. Were you there at the same time?

9 A. It's possible that in 2010 he could have
10 been there. I just don't recall.

11 Q. Okay. But how do you know that he was
12 there for some period of time?

13 A. Because of the lockdown, I know some of the
14 inmates were moved from the Southern to the
15 Penitentiary of New Mexico.

16 Q. Mr. Roark, I'm going to show you
17 document -- move the Court for admission of Rudy
18 Perez Exhibit G.

19 THE COURT: Any objection Ms. Armijo?

20 MS. ARMIJO: Oh, no, Your Honor.

21 THE COURT: Any objection from any
22 defendant?

23 All right. Rudy Perez Exhibit G will be
24 admitted into evidence.

25 Q. Mr. Roark, this is a document called

1 "Interim Level 6 Disciplinary Placement," dated March
2 11, 2014, for Rudy Perez. Are you familiar with this
3 form?

4 A. Yes, ma'am, I am.

5 Q. Okay. Have you ever looked at this Interim
6 Level 6 Disciplinary Placement for Rudy Perez?

7 A. I don't recall ever seeing it before,
8 ma'am.

9 Q. Well, it says that on March 11, 2014, Rudy
10 Perez was involuntarily placed in Level 6; is that
11 right?

12 A. That's correct.

13 Q. And do you know the basis for that
14 placement?

15 A. It was pending the investigation. It was
16 part of the investigation.

17 Q. Okay. So was everybody in blue and yellow
18 pods at Southern placed in Interim Level 6 pending
19 the investigation in March of 2014?

20 A. We were investigating all of the SNM. So
21 yes, ma'am, they should have all been placed on
22 Interim Level 6.

23 Q. Do you know how long those individuals were
24 held in Interim Level 6?

25 A. No, ma'am, not without reviewing other

1 documentation, no.

2 MS. BHALLA: We just couldn't hear the
3 answer in the back of the room.

4 THE COURT: He said, "No, ma'am, not
5 without reviewing other documentation, no."

6 Q. So do you know if Mr. Perez was
7 subsequently released from Interim Level 6 placement?

8 A. I don't know, ma'am.

9 Q. Do you know if the individuals who were
10 being investigated in March of 2014 were released,
11 those suspected SNM members?

12 A. Some were released, yes, ma'am.

13 Q. Okay. I'm going to show you Government's
14 Exhibit 43, which I think you already looked at --
15 and the Government asked you, the prosecutor asked
16 you about a period of time in 2016. Can you tell
17 me -- and this is Rudy Perez' Offender Physical
18 Location History, right?

19 A. Yes, ma'am.

20 Q. Can you tell me -- looks to me like Mr.
21 Perez was then sent to the Penitentiary of New Mexico
22 on June 17, 2015. Is that how this reads?

23 A. That's correct.

24 Q. Okay. Do you know why he was sent there?

25 A. No, not specifically, no, ma'am.

1 Q. You don't know if it was for discipline?

2 A. No, ma'am, I don't know.

3 Q. Okay. What are -- what, if any, are valid
4 reasons for him to have been sent there, if you know,
5 in June of 2015?

6 A. There could have been any number of
7 reasons. He could have -- we were moving the SNM a
8 lot. We were moving SNM out of the Southern, so we
9 were bringing a lot of them up to the penitentiary.

10 Q. Let me ask you this: We looked at
11 Defendant's Exhibit F, and you explained to me that
12 in June of 2015, in order to be sent to Level 6, you
13 had to be identified as an STG member or suspected
14 STG member, something else C1, but there also had to
15 be a documented history of institutional behavior
16 meeting one of the following criteria. There had to
17 be an act of violence, or directing others to engage
18 in violence; threats or coercion of other inmates; or
19 involvement in directing others to engage in
20 organized unauthorized activity. Is that right?

21 A. That's in the policy, yes, ma'am.

22 Q. And so you don't know, sitting here today,
23 whether Rudy Perez had done anything that met the
24 criteria contained in this policy?

25 A. Not without documents in front of me, no.

1 I can't tell you, no.

2 Q. Since you've never seen those documents,
3 you don't know why Mr. Perez was housed in Level 6?

4 A. I don't know specifically why he was sent
5 to Level 6 on that date, no.

6 Q. Okay. Do you know anybody who would know?

7 A. You could ask -- could you look at -- that
8 information should be in his file.

9 Q. Who maintains that file?

10 A. The penitentiary -- whatever, his
11 caseworker.

12 Q. So that would be a caseworker at PNM?

13 A. Possibly or -- yes, that's a possibility.

14 Q. Okay. That's the only person who would
15 know why Mr. Perez was housed at Level 6 in the June
16 of 2015, that caseworker?

17 A. The unit manager would also know, and
18 probably the warden and deputy warden.

19 Q. Okay. And who are the warden and deputy
20 warden?

21 A. The deputy warden at this time at the PNM
22 North facility is -- the acting Deputy Warden is
23 Wendy Perez.

24 Q. Okay. So she would know all about why Rudy
25 Perez was housed in Level 6 in June of 2015?

1 A. Well, I can't say she would know
2 everything, because again, she may have to refer back
3 to the documentation. So --

4 Q. Okay. I think it was your testimony, sir,
5 that you don't recall having any involvement at any
6 time in Mr. Perez' housing at PNM; is that right?

7 A. Not specifically his housing, no.

8 Q. Okay. If we look at Government's Exhibit
9 43, you can see that Mr. Perez was held at PNM, as we
10 said, from June 17, 2015. And can you tell when he
11 left PNM? Is it this April 18, 2016 that he left?

12 A. No, ma'am. It showed that he went to
13 Southern New Mexico Correctional Facility, but the
14 next line shows he was housed back at the North. So
15 I'm not sure what that entry was.

16 Q. Okay. And so he was held, at least until
17 April 18, 2016, from June 17, 2015?

18 A. No. It looks like he was held at PNM North
19 from June 17, 2015 to April 28 of 2016.

20 Q. Okay. So about 10 months?

21 A. Yeah, roughly, ma'am.

22 Q. But you don't know why?

23 A. Because there was an ongoing investigation
24 with SNM.

25 Q. Okay. But you don't know of any threat or

1 other justification for holding Mr. Perez according
2 to the policies?

3 A. Not according to the policies.

4 Q. Okay. And you don't know who made the
5 decision to house him at PNM?

6 A. Well, we were moving the SNM out of the
7 Southern New Mexico Correctional Facility, and moving
8 them to the Penitentiary of New Mexico.

9 Q. When you say "we," who do you mean?

10 A. The Department.

11 Q. Okay. But the Department had to follow the
12 policies in effect at the time, right, in June 2015?

13 A. We had policies, yes, ma'am.

14 Q. Okay. And so, in June 2015, in order for
15 Mr. Perez to be held at PNM, there must have been a
16 finding that there was some sort of credible threat
17 or documented history of violence on his part to
18 justify that; is that right?

19 A. We can lock up people pending the outcome
20 of an investigation.

21 Q. Okay. So is it your testimony that the
22 only reason Rudy Perez was held in June 2015, was
23 because he was thought to be an SNM member?

24 A. We had -- no, no, ma'am, that's not right.

25 Q. Okay. Tell me why he was held.

1 A. He was held because he was part of the
2 investigation, a part of the SNM. We didn't know who
3 was involved with who. We didn't know what SNM
4 members were going to conduct acts of violence on
5 what other SNM members. We didn't understand the
6 factions. We had had a murder, we had had an
7 assault. We just -- we were investigating the whole
8 SNM, ma'am.

9 Q. And June 2015 was 15 months after the
10 Javier Molina murder; is that right?

11 A. Yes, ma'am.

12 Q. Okay. And so what happened 15 months after
13 the Javier Molina murder that caused you to move
14 inmates who were thought to be SNM to PNM?

15 A. We wanted to put all the SNM in one
16 facility. So that was our decision.

17 Q. But all the SNM weren't held at PNM, right?

18 A. We were moving them, we were transitioning
19 them out of the Southern New Mexico Correctional
20 Facility.

21 Q. So is it your testimony that you made the
22 decision in June of 2015, 13 months after the Javier
23 Molina murder, to move all the SNM or suspected SNM
24 inmates to PNM Level 6?

25 A. Well, some of them wound up going to the

1 South facility. But yes, in that course of time.

2 Q. Okay. So you made the decision to move
3 everybody that you thought was SNM to the
4 Penitentiary of New Mexico in the summer of 2015?

5 A. Yes. I consulted with the Secretary and
6 Deputy Secretary, but yes.

7 Q. Okay. And you made the decision, then, to
8 move Rudy Perez to the Penitentiary of New Mexico?

9 A. Yes, ma'am.

10 Q. Okay. Now, a little while ago you told me
11 you didn't recall having anything to do with Rudy
12 Perez being housed at PNM. Tell me what you remember
13 about that now.

14 A. Well, the decision was made -- I didn't
15 specifically know of Rudy Perez' case, in terms of
16 where we were going to place him, but I made the
17 decision, yes, we're going to move all the SNM to the
18 Penitentiary.

19 Q. Okay. And what was the basis for that
20 decision? What prompted you, 13 months after the
21 Javier Molina murder, to make that decision?

22 A. The decision was made because it was just
23 going to be easier to do an investigation if we had
24 them all in one place.

25 Q. So over a year after the murder, you

1 decided that you wanted them all to be -- all the SNM
2 members to be at the Penitentiary of New Mexico, to
3 continue the investigation?

4 A. Yes, ma'am. I think that's fair.

5 Q. Okay. And that is the reason that Rudy
6 Perez was held there in June of 2015, because you
7 were completing an investigation of the SNM?

8 A. Yes, ma'am.

9 Q. Are you aware that -- let me ask you this:
10 The Government asked you about N 3A Q 101 S, right?

11 A. Yes, ma'am.

12 Q. And the prosecutor asked you -- I think Ms.
13 Armijo asked you if that was a handicapped cell. And
14 you said, "It's located in an area that has
15 handicapped cells," right?

16 A. It's in an area that has handicapped
17 access.

18 Q. Okay. It is not, in itself, a special
19 handicapped cell, right?

20 A. I'd have to look at that cell. We do have
21 handicapped cells that have showers in them. But
22 that specific one, I can't tell you.

23 Q. You can't tell me if that's one of them.

24 A. That's right.

25 Q. And are you aware that the Government --

1 have you talked to the Government about their
2 response to -- the pleading that they filed in this
3 case for this hearing on Mr. Perez' motion to
4 suppress? Did you have anything to do with that?

5 A. I'm not sure what you're asking, so I guess
6 the answer is no.

7 Q. Okay. The court document that was filed in
8 this case, for this hearing, by the prosecution
9 stated that Mr. Perez was held in this cell because
10 it's a handicapped cell. But you can't tell me if
11 this is a handicapped cell?

12 A. I can tell you the pod has handicapped
13 access.

14 Q. Okay. But you've already told me that the
15 reason that Mr. Perez was held in this cell is
16 because you were continuing an investigation of the
17 SNM?

18 A. We were continuing. Both items are true.

19 Q. You've answered my questions on that.

20 Now, are you familiar with Mr. Billy
21 Cordova?

22 A. I do know Inmate Billy Cordova, yes.

23 Q. Do you know that he was, for a period of
24 time, held at the Penitentiary of New Mexico Level 6?

25 A. I do.

1 Q. And do you know when he was there?

2 A. Unless I look at the -- I can't tell you
3 off the top of my head. But --

4 Q. Okay. And he -- do you know him
5 personally?

6 A. I know him a little bit better than Rudy
7 Perez, just because I happened to work in the same
8 areas that he lived in. But, no, I don't really know
9 him personally.

10 Q. You had just been at the same facilities
11 that he's been in at the same time?

12 A. More often than Mr. Perez.

13 Q. Okay. Is he one of the individuals you
14 talked to Mr. Acee about, when you talked about
15 putting money on inmates' books?

16 A. We didn't talk about individual inmates,
17 no.

18 Q. Are you aware that he was getting money put
19 on his books by the Government while he was at PNM?

20 A. I probably was -- yes, ma'am, I was aware.

21 Q. Okay. And you helped make that happen?

22 A. I told him how that works.

23 Q. Because there is a way to do it so that you
24 can't tell, looking at the documentation, that the
25 money is coming from the government, right?

1 A. No, ma'am. That I would have -- no, ma'am.

2 Q. Okay. And did you have anything to do with
3 making the decision to house Billy Cordova at PNM?

4 A. It's kind of like Rudy Perez: No, not
5 directly. I didn't tell anyone to put him in that
6 cell. But yes, I did tell them: We're moving him to
7 PNM.

8 Q. But you don't remember when that happened?

9 A. Not without looking at the dates on the
10 inmate locator.

11 Q. I'm going to show you Government's Exhibit
12 45. This is Billy Cordova's location history. You
13 remember this. Looking at this document, can you
14 tell me when Mr. Cordova went to PNM?

15 A. It looks like he originally went to PNM on
16 January 7, 2016. I'm sorry, ma'am, how far down do
17 you want me to read?

18 Q. No, that's fine. January 7, 2016. And so
19 you explained that in the summer, June of 2015, you
20 made the decision to bring all the SNM inmates to
21 PNM, right?

22 A. We were transitioning the SNM all to PNM,
23 yes, ma'am.

24 Q. Do you know if Billy Cordova is SNM?

25 A. He is.

1 Q. Okay. But he was not brought there in the
2 summer of 2015, according to this Government's
3 Exhibit 45, right?

4 A. No, ma'am. He hadn't transitioned yet, no,
5 ma'am.

6 Q. He wasn't brought there until January 2016.
7 And so you asked for him to be brought there in
8 January 2016?

9 A. I mean, yes. Ultimately, I'm responsible.
10 But I don't do the transport orders. But the answer
11 is yes.

12 Q. But did you ask that he be moved to PNM?

13 A. I knew that the SNM were being moved to
14 PNM.

15 Q. Okay. And we already talked about Rudy
16 Perez, and he was moved in June of 2015. And you
17 told me you were involved in transitioning all the
18 SNM to PNM, right?

19 A. That's correct.

20 Q. Okay. Now, we're in January of 2016. And
21 you asked for Mr. Cordova -- can you tell me if
22 anybody else who is SNM was moved to the Penitentiary
23 of New Mexico in January of 2016?

24 A. I can't tell you without looking at
25 transport orders and stuff like that, ma'am.

1 Q. Okay. But you asked that Mr. Cordova be
2 moved in January of 2016, looking at Government's
3 Exhibit 45?

4 A. Well, if you look at the locator history,
5 it looks like he had court -- he had already been at
6 the PNM North, if you look down. And he had gone to
7 Central because he had to go to court. For those
8 inmates that are go into court to Albuquerque, we
9 transfer them to Central until they're done with
10 their court dates.

11 Q. Okay. And in January 2016, Mr. Cordova was
12 pending -- do you recall Mr. Cordova was pending
13 sentencing?

14 A. No, ma'am, I can't say that I recall that.

15 Q. I know you deal with a lot of people coming
16 in and out of facilities. And so, if you don't
17 remember specifically, that's fine. I'm just trying
18 to figure out if you know why he was brought there in
19 January of 2016?

20 A. It looks like -- I mean, just based on this
21 documentation -- of course, I don't know what he was
22 doing at MDC -- but it looks like he was out to
23 court.

24 Q. Okay. And when he came to PNM in January
25 2016, if he had not yet been sentenced, what are the

1 reasons that he could have been held at PNM pursuant
2 to the policies?

3 A. If he hadn't been sentenced yet?

4 Q. Yeah. I know you don't know if he hadn't
5 been sentenced. But if an inmate is pending
6 sentencing, and they're held at PNM, what are the
7 valid reasons for that?

8 A. Well, I mean, there is several different
9 reasons. It could be all the things that we had
10 already talked about. It could be because he's a
11 county hold. We hold inmates for the county, and
12 then they reimburse us. So that's a possibility.

13 Q. And that's where the county asks the New
14 Mexico Corrections Department to hold an inmate at
15 Level 6?

16 A. Yeah. Sometimes they'll specifically
17 request a facility. But sometimes they'll just
18 say -- they'll remand them to our custody, and we
19 just decide where to place them.

20 Q. You make that classification decision then?

21 A. We do. And we usually -- usually, when the
22 courts send us someone, it's because they're creating
23 some sort of security problem within the county jail.
24 So we just kind of -- most of the time send them to
25 the Penitentiary North facility.

1 Q. Okay. And Mr. Cordova also could have been
2 held there for discipline, right?

3 A. Discipline, yes, ma'am.

4 Q. And if that were the case, there would be
5 documentation of that in his NMCD file?

6 A. Yes, ma'am, there would be.

7 MS. FOX-YOUNG: Your Honor, I move to admit
8 Rudy Perez Exhibit H. I don't believe the Government
9 objects.

10 THE COURT: Is that correct?

11 MS. ARMIJO: No objection.

12 THE COURT: Anybody else have any
13 objection? All right. Defendant Rudy Perez' Exhibit
14 H will be admitted into evidence.

15 Q. Okay. And I think, Mr. Roark, you said
16 that you didn't recall having anything to do
17 specifically with Rudy Perez' housing at PNM, but you
18 did request that all the SNM inmates be moved?

19 A. Yes. I get transport orders, and I get
20 told about transports. So, yeah, I would have known
21 that he was getting moved to the penitentiary.

22 Q. Okay. Showing you what's been marked as
23 Rudy Perez Exhibit H, and I will try to zoom in on it
24 so can you see it. And if you want to see the
25 document itself, I'll bring it to you. But I'll

1 represent to you that this is an email chain that
2 appears to involve you and Ms. Wendy Perez, who I
3 think you talked about, who is the Deputy Warden; is
4 that right?

5 A. Yes.

6 Q. And Roland Mares. Who is he?

7 A. He is -- I believe at the time he was a
8 classification officer.

9 Q. Okay. And do you see where there is an
10 email from you that's included in this document?

11 A. I do.

12 Q. And it appears to be from February 11,
13 2015; is that right?

14 A. Yes.

15 Q. It looks like you wrote all the wardens,
16 and you talked to them -- is this to all the wardens?

17 A. It was.

18 Q. Okay. And Wendy Perez received this email?

19 A. She eventually received it, yes.

20 Q. Okay. It looks like you sent an email to
21 the wardens talking about inmates who owe
22 disciplinary time under the old rules, right?

23 A. Yes, ma'am.

24 Q. And Ms. Wendy Perez took this email, and it
25 looks like the email was then forwarded to German

1 Franco, right? If you just look up at the top of
2 this document.

3 A. Yes, eventually, yes, ma'am.

4 Q. And the subject line reads, "Rudy Perez
5 40830," and then in the body of the email it says,
6 "Call me on this so I can explain, please." Do you
7 see that?

8 A. Yes, ma'am.

9 Q. Do you know what that's about?

10 A. I don't know what Ms. Perez and Mr. Franco
11 talked about, no.

12 Q. Okay. And then down at the bottom in this
13 email -- and I know this document contains different
14 emails. It was produced this way from the
15 Corrections Department, I will represent to you. At
16 the bottom there is a description from Mr. Roland
17 Mares to Shane Donahue, Wendy Perez. Who is Shane
18 Donahue?

19 A. I don't recognize the name.

20 Q. And it talks about an old report from three
21 years prior, right, February of 2013?

22 A. It does.

23 Q. But you don't know anything about that with
24 regard to Rudy Perez?

25 A. No, not today, I don't.

1 Q. Okay.

2 MS. FOX-YOUNG: Your Honor, just a moment.

3 THE COURT: Certainly.

4 MS. FOX-YOUNG: Your Honor, I'll pass the
5 witness.

6 THE COURT: Thank you, Ms. Fox-Young.

7 Ms. Bhalla, do you have cross-examination
8 of Mr. Roark?

9 MS. BHALLA: Your Honor, if we could have
10 just a couple of minutes to reorganize the exhibits?
11 It shouldn't take but a minute.

12 (A discussion was held off the record.)

13 EXAMINATION

14 BY MS. BHALLA:

15 Q. Good afternoon, Mr. Roark. I think it's
16 afternoon now.

17 You testified that everybody was put on
18 lockdown in March of 2014, after the Molina homicide;
19 is that correct?

20 A. Yes, ma'am.

21 Q. Okay. And that was in the Southern
22 facility?

23 A. Well, it was all SNM. So not just at
24 Southern; it was at Central and --

25 Q. So wherever they were located?

1 A. Yes, ma'am.

2 Q. Okay. And I'm going to show you a
3 document. Can you see that on your computer screen?

4 A. Yes, ma'am, I can.

5 Q. And do you see that that is an Interim
6 Level 6 placement for Mr. Herrera?

7 A. Yes, ma'am.

8 Q. And that is dated March of 2014?

9 A. Yes, ma'am.

10 Q. So would you agree with me that Mr. Herrera
11 was also placed on Interim Level 6 lockdown after the
12 Molina homicide?

13 A. I would.

14 Q. Okay. And when you look at these location
15 histories -- I'm going to show you what has been
16 marked as Government's Exhibit 44, which would be the
17 location history for Mr. Herrera. Can you take a
18 look at that?

19 A. Yes, ma'am.

20 Q. Do you see his location history for March
21 of 2014?

22 A. Yes, ma'am, I see it.

23 Q. Does that location history indicate whether
24 or not he was on Interim Level 6?

25 A. It doesn't.

1 Q. Excuse me?

2 A. The location history itself doesn't show
3 that.

4 Q. Okay. So by looking at the location
5 histories alone, you can't tell, wherever these
6 inmates were, what restrictions were placed on them
7 in terms of Interim Level 6 or Level 4 or general
8 population?

9 A. That's correct, not just looking at this.

10 Q. Okay, thank you.

11 Now, I'm going to show you another document
12 for Mr. Herrera. Would you agree that this is
13 another Interim Level 6 placement for Mr. Herrera?

14 A. It is.

15 Q. And then it's dated December of 2014?

16 A. Yes, ma'am.

17 Q. And would you agree with me that Mr.
18 Herrera was still on Interim Level 6 at that time?

19 A. He was.

20 Q. Okay.

21 MS. BHALLA: Your Honor, I want to move --
22 gosh there is too many exhibits up here. I would
23 like to move those two interim placements with Mr.
24 Herrera into evidence as Exhibits D and E for Mr.
25 Herrera.

1 THE COURT: Any objection, Ms. Armijo?

2 MS. ARMIJO: I don't. But I would ask in
3 the future before we show things, that we have an
4 opportunity to have it placed into evidence.

5 THE COURT: All right. Anybody else have
6 any objections? All right. Then Defendant Carlos
7 Herrera's Exhibits D and E will be admitted into
8 evidence.

9 BY MS. BHALLA:

10 Q. Do you recall, Mr. Roark, testifying about
11 the Level 5 and Level 6 placement criteria and
12 procedures?

13 A. I do.

14 Q. And do you recall that one of their
15 criteria is that they are actively participating in
16 gang-related activities?

17 A. I do recall that.

18 Q. Okay. I'm going to show you a couple of
19 other classification forms, but I believe I need to
20 show Ms. Armijo first.

21 Can you see this document on your screen,
22 Mr. Roark?

23 A. Up till number 9.

24 Q. Okay. I can scroll it down.

25 Unfortunately, I don't think I can make the whole --

1 is there a way to make it smaller?

2 MS. ARMIJO: Your Honor, I'm going to
3 object. She's going to move it into evidence. We
4 don't have any objection. But at least for the
5 record if she's going to mark it and put for the
6 record what exhibit she is referring to.

7 THE COURT: Are you going to move this into
8 admission, Ms. Bhalla?

9 MS. BHALLA: Yes, Your Honor, I believe we
10 left off with E. So I believe it would be Carlos
11 Herrera's F and G. And I didn't have enough -- I
12 still need to mark it with the exhibits.

13 THE COURT: All right. There is no
14 objection from the Government on these?

15 MS. ARMIJO: No, Your Honor.

16 THE COURT: Anybody else have any
17 objection? Defendant Carlos Herrera's Exhibits F and
18 G will be admitted into evidence.

19 Q. Is that better, Mr. Roark?

20 A. It is.

21 Q. Okay. And can you read the title of that
22 document for us?

23 A. It's Reclassification Scoring Form.

24 Q. Okay. And the review date on this document
25 was June 18 of 2014?

1 A. That's correct.

2 Q. And at that time Mr. Herrera was still
3 being held on Interim Level 6; is that correct?

4 A. I believe that's correct.

5 Q. Would you also agree with me that, if you
6 go down to number 9, "Gang membership and activities
7 in the past ten years" -- can you take a look at that
8 section?

9 A. Yes, ma'am.

10 Q. And isn't it true that the form indicates
11 that Mr. Herrera had no gang activity or membership
12 in the last 10 years?

13 A. That's what the form says, yes.

14 Q. But he was still being held in Interim
15 Level 6?

16 A. That's correct.

17 Q. I'm going to show you another form, which
18 would be F, I believe -- G -- thank you. Is that a
19 similar form to the one that you just reviewed?

20 A. It is.

21 Q. And is the review date on that December 2nd
22 of 2014?

23 A. It is.

24 Q. And is he still being held in Interim Level
25 6, Mr. Herrera?

1 A. Yes.

2 Q. And again, if you look at number 9, the
3 indications are that Mr. Herrera still had no gang
4 involvement or activities in the past 10 years; is
5 that correct?

6 A. On the first page of the scoring form
7 that's correct.

8 Q. Would you like to see the second page?

9 A. Yes, ma'am, I would.

10 Q. Does the second page tell you anything
11 different?

12 A. Yes. It does. It shows that there is a
13 mandatory override factor; that he can't go to Level
14 1, Level 2, Level 3 facility, because he's a
15 validated or suspected STG member.

16 Q. That's correct. But he's still being held
17 in Interim Level 6 based on the STIU investigation;
18 is that correct?

19 A. That's true, ma'am.

20 Q. Okay.

21 THE COURT: Ms. Bhalla, would this be a
22 good time for us to take our lunch break?

23 MS. BHALLA: Your Honor, you know what, to
24 be honest, I really don't have that much more. I
25 don't know if you want me to finish up with him. I

1 mean, I think maybe four minutes. We can take a
2 break, that's fine. But just in the interests of
3 being candid with the Court.

4 THE COURT: All right. Go ahead.

5 Q. I'm just going to show the Government two
6 more documents.

7 MS. BHALLA: What number am I on? H.
8 Thank you.

9 Q. I'm going to show you a document that will
10 be Carlos Herrera's Exhibit H. Can you take a minute
11 to review that document, Mr. Roark? Is that form
12 related to Mr. Herrera?

13 A. Yes, ma'am.

14 Q. And it's a committee review form?

15 A. It's a TAP committee review form.

16 Q. And it's dated December of 2014?

17 A. It is.

18 Q. And if you look at the bottom where it
19 says, "Security needs or recommendations," isn't it
20 correct that there are none?

21 A. That's correct. No one wrote anything in
22 there.

23 Q. I'm going to show you -- and you testified
24 previously, Mr. Roark, that a lot of the SNM inmates
25 were being moved to PNM in the summer of 2015; is

1 that correct?

2 A. I believe that's when we began moving
3 them --

4 Q. Okay.

5 A. -- many of them.

6 Q. I'm going to show you what's been marked as
7 Government's Exhibit 44. When was Mr. Herrera moved
8 from Southern to PNM?

9 A. It looks like the last time was January 27.

10 Q. Of what year?

11 A. 2016.

12 Q. So that would have been after the summer of
13 2015?

14 A. It was.

15 MS. BHALLA: Can I have just one moment,
16 Your Honor?

17 THE COURT: You may.

18 MS. BHALLA: I have nothing further, Your
19 Honor. Thank you.

20 THE COURT: Thank you, Ms. Bhalla.

21 All right. Let's go ahead and take our
22 lunch break. We'll be in recess for about an hour.
23 Have a good lunch.

24 (The Court stood in recess.)

25 THE COURT: All right. Everybody take

1 their seats. We'll go on the record. Look around,
2 make sure everybody has got a lawyer. Looks to me
3 like everybody does. Let's just make sure.

4 All right. Anybody have any further
5 cross-examination of Mr. Roark?

6 All right. Ms. Armijo, do you have
7 redirect?

8 MS. ARMIJO: I believe Mr. Jewkes does.

9 THE COURT: Oh, Mr. Jewkes. All right.
10 Mr. Roark, I'll remind you that you're still under
11 oath. Mr. Jewkes.

12 MR. JEWKES: Thank you, Your Honor. May it
13 please the Court.

14 THE COURT: Mr. Jewkes.

15 MR. JEWKES: Your Honor, if I may, I'd like
16 to look at the white paper admitted for purposes of
17 this hearing as RP-D, if I may have just a moment.

18 THE COURT: You may.

19 EXAMINATION

20 BY MR. JEWKES:

21 Q. Good afternoon, Mr. Roark.

22 A. Good afternoon.

23 Q. I pronounced your last name correctly,
24 Roark?

25 A. It's Roark, sir.

1 Q. Mr. Roark, this white paper that was
2 discussed earlier this morning, you're the author of
3 it?

4 A. Yes, sir.

5 Q. And did you have any assistance in writing
6 it? By that I mean, are you the sole author of this
7 report?

8 A. I'm the sole author.

9 Q. So all conclusions in this report are your
10 conclusions?

11 A. They were conclusions based on the
12 preliminary and initial information we received.

13 Q. Okay. Did you rely on any information from
14 informants?

15 A. Not directly.

16 Q. Not directly.

17 If we may -- can you see this all right?

18 A. Yes, sir, I can.

19 Q. How does this magnify? Thank you.

20 We're looking at -- even though it's not
21 marked as page 1, it's the first page in this packet.
22 And it says, "Video footage shows that inmate Daniel
23 Sanchez, 43068, was orchestrating and directing the
24 assault." You wrote that?

25 A. I did, sir.

1 Q. And how many times did you watch that
2 video, the video of the March 7 assault?

3 A. Once or twice.

4 Q. Once or twice. Have you viewed it
5 recently?

6 A. No, sir, I have not.

7 Q. Can you tell us exactly what you saw in
8 that video that indicated that Daniel Sanchez was
9 orchestrating and directing the assault?

10 A. No, sir, I can't do that today.

11 Q. You can't do that?

12 A. No, sir.

13 Q. Would it surprise you if I told you that in
14 the video Mr. Sanchez is seated at a card table, a
15 steel table, in the middle of the pod?

16 A. I haven't seen the video in a while, sir.

17 Q. You haven't?

18 A. No, sir.

19 Q. Okay. So having not seen the video in
20 quite a while, is it possible that this statement is
21 incorrect? In other words, not necessarily the
22 truth, not that you lied. I'm just saying that you
23 could be wrong?

24 A. I wrote this three years ago, so
25 perceptions do change, yes, sir.

1 Q. Fair enough.

2 Now, what, if anything, do you remember
3 about the video of the March 7 assault on Javier
4 Molina? Anything?

5 A. Very little, sir. I viewed it three years
6 ago, so I'd have to see it again, sir.

7 Q. Mr. Roark, you've been with the Department
8 of Corrections since 1989?

9 A. Yes, sir.

10 Q. By my count, that's 28 years. You worked
11 your way up from the bottom, started off as a
12 detention officer, or a correctional officer;
13 correct?

14 A. That's correct, sir.

15 Q. Okay. I take it you're familiar with
16 shanks?

17 A. I am.

18 Q. Do you know what a shank is?

19 A. Yes, sir, I do.

20 Q. You've probably seen them a bunch of times,
21 haven't you?

22 A. I have.

23 Q. Do you know how they're made?

24 A. Generally, how they're made, yes, sir.

25 Q. How long does it take to make a shank?

1 A. Well, it depends. It depends on the type
2 of material, how motivated the inmate is, the tools
3 he has available, if he has any. I mean, I don't
4 know there is a time period, but it depends.

5 Q. It varies, right?

6 A. Yes, sir.

7 Q. Okay. We'll agree that most of the time
8 shanks are made out of steel, would you agree?

9 A. Most of the time. There are exceptions.

10 Q. Okay. And you're aware that there were
11 three shanks seized in connection with this case --
12 and for the sake of simplicity, let's call it the
13 Molina case, all right?

14 A. Yes, sir.

15 Q. Three shanks in evidence. Have you ever
16 seen those shanks?

17 A. I haven't seen them in a while, no, sir.

18 Q. No, okay. Do we both agree that inmates
19 doing time in the New Mexico Department of
20 Corrections are not allowed to have files or electric
21 grinders? Do you agree with that?

22 A. In their personal property, that's correct.

23 Q. So how are these shanks made? If they're
24 made out of steel, and they're made surreptitiously,
25 how is that accomplished?

1 A. Well, a lot of times the inmates will -- if
2 the metal is pliable enough, they'll take the metal
3 and they'll grind it against the concrete, and that
4 sharpens it.

5 Q. Okay. So in a typical prison setting,
6 we're talking about either concrete floor, concrete
7 wall, or maybe a concrete pillar? Would you agree
8 with that?

9 A. Yes, sir.

10 Q. And you train your correctional officers to
11 look for grind marks, either on the walls, on the
12 pillars, or on the floors, would you agree with that?

13 A. That's part of the search training, yes,
14 sir.

15 Q. They check these various places several
16 times a day, don't they?

17 A. They're required to do three cell searches
18 a day in each housing unit. So they do check. They
19 do look into every cell, but they only do three cell
20 searches that are beyond just a casual observance.

21 Q. All right, sir. Well, after March 7, 2014,
22 are you aware of any of the employees, DOC employees
23 out there at Southern, looking for such grind marks,
24 specifically in the blue pod at Southern New Mexico?

25 A. It should have been part of their job, yes,

1 sir.

2 Q. Did you indicate anything about that in
3 your white paper, Mr. Roark?

4 A. Not in the blue pod, no, sir.

5 Q. Not in that blue pod?

6 A. No.

7 Q. So can we safely assume then that there
8 were no grind marks found in blue pod on or after
9 March 7, 2014? Would that be a safe assumption?

10 A. There was none that I know about, yes, sir.

11 MR. JEWKES: Pass the witness, Your Honor.

12 THE COURT: Thank you, Mr. Jewkes.

13 Did someone else want -- Ms. Duncan.

14 MS. DUNCAN: Yes, Your Honor. Thank you.

15 THE COURT: Ms. Duncan.

16 MS. DUNCAN: If I may just have a moment,
17 Your Honor. I need some of these exhibits.

18 THE COURT: You may.

19 EXAMINATION

20 BY MS. DUNCAN:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. I wanted to talk to you about the
24 conversation that you had with Anthony Ray Baca in
25 January of 2014.

1 A. Yes, ma'am.

2 Q. Can you begin by telling us why was Anthony
3 Ray Baca transferred from Southern New Mexico
4 Correctional Facility to PNM North in 2013?

5 A. I don't want to mislead you. I'd have to
6 look at the file exactly to tell you why he was
7 transferred. I mean, there were some safety issues,
8 but I don't remember exactly.

9 Q. Okay. So there were some safety issues.
10 Would I be correct in saying that there were
11 confidential informants that indicated that there
12 might be a threat to Mr. Baca's life?

13 A. It would be something like that. Again, I
14 don't remember the exact circumstances. But, yes,
15 ma'am.

16 Q. Do you recall that his transfer to PNM was
17 based on an involuntary placement in Level 6;
18 correct?

19 A. That's correct.

20 Q. Based on personal safety; correct?

21 A. That's correct.

22 Q. And I would like to show you what I'm going
23 to mark as Anthony Baca -- AB-A. And for the record,
24 this is Bates stamped DeLeon 27801.

25 MS. DUNCAN: Your Honor, I don't think the

1 Government has any objection, so I would move the
2 admission.

3 THE COURT: Anybody else have an objection?
4 All right. Defendant Anthony Baca's Exhibit A will
5 be admitted into evidence.

6 BY MS. DUNCAN:

7 Q. So I'm showing you Exhibit AB-A. And this
8 is the Interim Level 6 disciplinary placement for
9 Anthony Baca; correct?

10 A. That's correct.

11 Q. And it's dated June 28 of 2013; correct?

12 A. That's correct.

13 Q. And it's signed by Captain Daniel Blanco.
14 Who was Captain Blanco at that time?

15 A. He was the captain of the Security Threat
16 Intelligence Unit at Southern New Mexico Correctional
17 Facility.

18 Q. At the bottom of the form, in the area
19 that's known as 72-hour review, that gives specific
20 justification for the action; correct?

21 A. To keep him on -- to remain in Interim
22 Level 6, yes, ma'am.

23 Q. So let me ask you about the procedure. So
24 how is it that an inmate is put in involuntary
25 placement for his own protection? What's the process

1 for that?

2 A. Well, in this case -- there is a couple
3 ways to do it. Well, I mean, if the inmate asks --
4 at that time, if an inmate asked to be placed in
5 involuntary placement, we would do that. If an
6 inmate -- if we have information based on
7 confidential sources that an inmate would be placed
8 in involuntary segregation, we would do that at that
9 time.

10 Q. And so how -- so in this case, Mr. Baca was
11 placed in involuntary segregation; correct?

12 A. That's correct.

13 Q. So what is the process for placing an
14 inmate in involuntary segregation? Is there a
15 procedure that the Department of Corrections follows
16 to do that?

17 A. There is. There is this placement form,
18 and then there should have been a confidential
19 information memorandum to support the lockup.

20 Q. And can you tell us what is the
21 confidential information memorandum?

22 A. It's a summary of confidential information.
23 We have nine criteria in order to lock someone up for
24 confidential information. You have to meet four of
25 those nine criteria.

1 Q. Do you know off the top of your head the
2 nine criteria?

3 A. I can try. I don't know about if I'll
4 remember all nine of them, ma'am. But some of them
5 are date and time of incident; person, date and time
6 of information received; place the information was
7 received; the person who received the information;
8 efforts to corroborate the information; the exact
9 nature of the information; whether the informants had
10 provided reliable information in the past. I'm
11 missing three I can't recall now.

12 Q. And with that confidential information, is
13 there a form that is used to verify the confidential
14 information?

15 A. It's not to verify. It's to summarize the
16 confidential information. And you have to outline
17 all the four criteria that you met.

18 Q. And when is that memorandum written that
19 you submitted?

20 A. Upon the decision to place him into Level
21 6; to remove him from Interim Level 6 and into Level
22 6.

23 Q. So after the decision is made to put
24 someone into Interim Level 6 -- I see on this form
25 that is a 72-hour review section at the bottom. Do

1 you see that?

2 A. Yes, ma'am.

3 Q. And what is the purpose of that review?

4 A. The purpose of the review is to make sure
5 that we're not housing someone in restrictive housing
6 that shouldn't be there.

7 Q. And what is the process for that review?

8 A. The chief of security should go talk to the
9 inmate, and then look over the evidence related to
10 the lockdown.

11 Q. And so is it the chief of security alone
12 who conducts the 72-hour review?

13 A. It's the chief of security or the unit
14 manager.

15 Q. And after the 72-hour review, the result of
16 that review is for someone to remain in Level 6,
17 what's the next step?

18 A. At that point, you have -- at that point
19 the unit manager needs to start working on referring
20 them to Level 6.

21 Q. And describe that process to us, please.

22 A. You write -- pretty much, you write a
23 justification on the document to the classification
24 bureau chief, who then makes a determination that
25 this person is going to go to Level 6.

1 MS. DUNCAN: I'm going to mark another
2 exhibit. This would be Anthony Baca B. For the
3 record, it is DeLeon Bates stamped 27792 through
4 27814. Your Honor, I would move for the admission of
5 Anthony Baca Exhibit B.

6 THE COURT: Any objection, Ms. Armijo?

7 MS. ARMIJO: No, Your Honor.

8 THE COURT: Anybody else have an objection?

9 Anthony Baca Exhibit B will be admitted
10 into evidence.

11 Q. I want to show you the first page of
12 Anthony Baca Exhibit B. And this is Bates No. DeLeon
13 27792. Is this an example of the confidential
14 informant memo that you mentioned earlier?

15 A. This is a confidential information
16 memorandum.

17 Q. And who would have written -- so on the
18 page -- first, there is a typed summary of the
19 confidential information; correct?

20 A. That's correct.

21 Q. And then lower on the document is some
22 handwriting. Can you tell us, what is that
23 handwriting?

24 A. It looks like someone reviewed this report
25 to see if it met the four to nine criteria.

1 Q. So these four criteria: Staff member, date
2 received; location received; and efforts to
3 corroborate, those are all confidential information
4 criteria?

5 A. Yes, ma'am.

6 Q. Do you know who wrote this?

7 A. I don't recognize the handwriting at all,
8 ma'am.

9 Q. So you said that after the 72-hour review,
10 then a packet is put together to do a more formal
11 referral to Level 6; is that correct?

12 A. That's correct, ma'am.

13 Q. Let me -- I'm going to hand you this
14 Anthony Baca Exhibit B, and I'm wondering if that
15 packet is contained in this exhibit.

16 MS. DUNCAN: Your Honor, may I approach?

17 THE COURT: You may.

18 A. No, ma'am, it's not.

19 Q. Where would that packet be held or kept?

20 A. It would be at the classification -- it
21 would be at the Classification Bureau.

22 Q. And where is the Classification Bureau?

23 A. Well, now, we call it the Offender
24 Management Services. That's in Albuquerque. They
25 keep packets of all referrals to Level 6 in our new

1 program.

2 Q. What would you expect to see in a referral
3 packet?

4 A. Just kind of a summary that's -- of what
5 you have. It would justify why he needed to be
6 placed in Level 6, and it would contain a lot of the
7 confidential information that you handed me.

8 Q. And so once you receive the referral
9 packet, what happens next?

10 A. It gets approved or denied for placement in
11 Level 6.

12 Q. And is there a form that's filled out when
13 someone is approved or denied?

14 A. There is.

15 Q. And is that form provided to the inmate at
16 issue?

17 A. Yeah, there will be a committee action for
18 the inmate.

19 Q. And after someone is approved for Level 6,
20 is there an appeal process?

21 A. They can appeal their placement in Level 6,
22 yes.

23 Q. And when that decision is being made to
24 keep someone at Level 6, is there a hearing?

25 A. The inmate can make an appeal. It's a

1 written appeal.

2 Q. So is there ever any formal process by
3 which an inmate can respond to the allegations that
4 led him to be placed in Interim Level 6?

5 A. He can make his response to the committee
6 through the unit management team, and he can also
7 make a written appeal also.

8 Q. So once someone has been confirmed to Level
9 6, is there a review process to determine whether
10 they should be released from Level 6?

11 A. There is. There is a couple of ways --
12 there are several ways to do it in Level 6. There is
13 regularly scheduled committee actions. And they can
14 make a referral. You can even -- you can request --
15 the unit manager can request a special committee
16 because he thinks, he or she may think the inmate is
17 ready to leave level 6. There is annual reviews.
18 There is regular reviews being done on the inmate.

19 Q. And in February or January of 2014, you
20 mentioned that you were deciding whether or not to
21 release Mr. Baca from Level 6; correct?

22 A. That's correct.

23 Q. And so what process were you following to
24 make that decision? I guess, let me go back. So
25 what triggered you to consider releasing Mr. Baca

1 from Level 6?

2 A. Well, what triggered me is because the
3 Secretary and the Deputy Secretary, my bosses, were
4 saying, Let's reduce the size of segregation, let's
5 build trust with our gang members. They were
6 noticing what other states had done. And I
7 decided -- I had already done this with another
8 prison gang, and I was successful in doing it. So I
9 decided I wanted to try to do it with the SNM.

10 Q. So the SNM, in general, not Mr. Baca
11 specifically?

12 A. Well, I needed to talk -- it's like any
13 organization. You talk to the leadership first, and
14 see if that leader is interested in increased
15 privileges, getting him out there. I just wanted to
16 see where his mind was on all this.

17 Q. But Mr. Baca was in Level 6 because there
18 was a threat or at least an alleged threat against
19 his life; correct?

20 A. There was.

21 Q. So he wasn't in Level 6 because he was
22 alleged to be the leader of the SNM; correct?

23 A. He wasn't. But he was a known leader in
24 the SNM.

25 Q. So when someone is sent into Level 6 as a

1 result of involuntary segregation, for example, if
2 there is a threat on their life, how do they get out
3 of Level 6? Is there a different process if you're
4 brought in disciplinary versus you're brought
5 arguably for your safety?

6 A. Yeah. It's the review process. At that
7 point when we think that the threat is no longer
8 there, we can release the inmate.

9 Q. So when you were deciding whether or not to
10 release Mr. Baca, wasn't the question whether it
11 would be safe for him to be returned to general
12 population?

13 A. That was one of the questions.

14 Q. What were the other questions?

15 A. Well, for me, it was was everybody going to
16 be safe.

17 Q. So having brought him in to Level 6 for his
18 own safety, you felt that that justified keeping him
19 in Level 6 for any other reason?

20 A. I'm not sure I understand.

21 Q. I phrased that badly. So if you bring
22 someone in to Level 6 for their own protection, and
23 then the cause of concern for their safety
24 dissipates, your opinion is that you can continue to
25 keep them in Level 6 for reasons other than why they

1 were originally placed there?

2 A. It's possible that that could happen, yes,
3 ma'am.

4 Q. So is there a process for transferring
5 from: I'm putting you in involuntary placement for
6 your own safety to now I'm holding you in
7 administrative segregation for another reason?

8 A. Yes, ma'am. You should start at Interim
9 Level 6, and start the process over again.

10 Q. And did you do that in Mr. Baca's case?

11 A. I did not.

12 Q. Do you know, was Mr. Baca ever given
13 notice -- so after that original classification, it
14 was determined he was going to be in Level 6. Was he
15 given written notice of that decision?

16 A. He should have been, but I can't -- unless
17 I have his file showing where he signed for it, I
18 can't tell you that for sure.

19 Q. And if that document existed, would it be
20 in the classification file held in Albuquerque?

21 A. No -- if -- it should be in Albuquerque
22 now, because he's not in our custody. But, usually,
23 it's at the files at whatever facility they're in
24 custody at.

25 Q. So, originally, they would have been at PNM

1 Level 6, but then eventually transferred to
2 Albuquerque?

3 A. Correct.

4 Q. Do you recall whether Mr. Baca appealed his
5 placement at PNM Level 6?

6 A. I don't recall.

7 Q. If an inmate appeals their placement at
8 Level 6, what's the process?

9 A. They write an appeal. And the appeal goes
10 up to -- the appeal can go all the way up to the
11 director of adult prisons.

12 Q. And so at the time, that would have been
13 you?

14 A. It would have.

15 Q. Then, when you're reviewing an appeal, what
16 do you typically do?

17 A. Well, it's usually assigned to whoever is
18 the appeals officer. And they do an investigation
19 into it. They look at all the documentation. And
20 then they bring it to me as a summary, and they kind
21 of give me a briefing on what they found.

22 Q. And do you rely just on the appeals
23 officer's briefing, or do you do any kind of
24 independent investigation?

25 A. It depends on how serious. It depends on

1 the inmate and how -- and what they found. I mean,
2 it just kind of varies. Occasionally, I would ask
3 for more information. Sometimes I thought the
4 information was complete, and that was fine, and I
5 signed off on it. So it depends.

6 Q. But you have no independent recollection of
7 whether Mr. Baca appealed or you were involved in an
8 appeal for him?

9 A. Ma'am, almost all the inmates appeal, so I
10 can't remember them all. No, ma'am.

11 Q. So the meeting you had with Mr. Baca -- was
12 in it January or February of 2014?

13 A. It was in January, ma'am, I'm sure.

14 Q. And was anyone else present?

15 A. Yes. Larry Phillips was with me.

16 Q. And was that a meeting initiated by you or
17 initiated by Mr. Baca?

18 A. It had -- well, it had to be initiated by
19 me.

20 Q. Did you take any notes during your meeting
21 with Mr. Baca?

22 A. No. Usually, I don't take notes in front
23 of the inmates, because they're less likely to talk
24 if you're taking notes in front of them.

25 Q. Would you take notes or record what

1 happened at the meeting after it was concluded?

2 A. Sometimes I would. If there was some
3 very -- if there was a lot of detailed information, I
4 would.

5 Q. Did you do so in this case?

6 A. I didn't, because there wasn't really a lot
7 of detailed information.

8 Q. I'd like to show you -- this is from Rudy
9 Perez Exhibit E. I'm not sure what page. I'm
10 showing you a memo from you to Chief of Staff, Mark
11 Myers, May 17 of 2016. Do you recognize this
12 document?

13 A. I do.

14 Q. And in this document you are discussing the
15 meeting you had with Mr. Baca in January of 2014;
16 correct?

17 A. Yes.

18 Q. And why did you write this memo on May 17,
19 2016, two years later?

20 A. Mr. Myers asked me to write a memo.

21 Q. And tell us about that conversation. What
22 exactly did he say to you?

23 A. Well, they had the letter that Mr. Baca had
24 written me in February of 2014. And they just asked
25 me what -- they just asked me, what brought on the

1 letter, and, you know, what was my conversation with
2 Mr. Baca like. And so I just documented it.

3 Q. Have you had conversations with anyone
4 other than Mr. Myers about -- let's say -- in this
5 case -- the first indictment was filed in December of
6 2015. Since December 2015, have you discussed your
7 meeting with Mr. Baca with anyone other than Mr.
8 Myers or during this hearing?

9 A. Not that I recall, no.

10 Q. And in your memo you state that Grievance
11 Administrator, Larry Phillips, was also present;
12 correct?

13 A. He was.

14 Q. So why was a grievance administrator at
15 your meeting with Mr. Baca?

16 A. I probably wanted a witness with me,
17 because Mr. Baca is a high ranking member of the SNM.
18 And, you know, I don't recall, but it is possible
19 that Mr. Baca had filed an appeal. And I wanted a
20 grievance officer with me there to hear what he had
21 to say. So that is a possibility. I just don't
22 remember.

23 Q. So is the grievance administrator someone
24 who coordinated appeals if they were filed, or
25 response to appeals?

1 A. Yes.

2 Q. And Larry Phillips, does he still work for
3 the Department of Corrections?

4 A. No, ma'am, he does not.

5 Q. And when did he leave Corrections?

6 A. About two years ago.

7 Q. Do you know where he works now?

8 MS. ARMIJO: Your Honor, I'm going to start
9 objecting. This is getting way beyond the scope of
10 what's relevant here. This is a motion to suppress
11 for Perez and Herrera, and now it's just a fishing
12 expedition, asking about where people are located.

13 MS. DUNCAN: Your Honor, Ms. Armijo asked
14 this witness a long series of questions about
15 Mr. Baca being transferred to PNM North, about his
16 meeting with Mr. Baca, about the letter that Mr. Baca
17 wrote, and grievance process, and I'm trying to
18 understand how that came -- I think that is fairly
19 within the scope of what came out on direct.

20 THE COURT: Well, but how is that relevant
21 to what I've got to decide, which is the
22 voluntariness of these statements?

23 MS. DUNCAN: It's relevant, one, because it
24 came out on direct, but also two, because the
25 question of whether or not Department of Corrections

1 was following its own procedures and putting people
2 into Level 6, the punitive measures I think is
3 directly relevant to Mr. Perez' argument that where
4 he placed was coercive; also to Mr. Herrera's
5 argument that the Department of Corrections
6 classification procedures were not being followed in
7 his case.

8 THE COURT: I guess I'm not seeing what
9 Baca's -- it's one thing for Perez and for Herrera,
10 but it doesn't -- it seems to me it is just discovery
11 on Baca. So I'm going to sustain.

12 MS. DUNCAN: Okay.

13 Q. You testified on direct that, when you were
14 questioning Mr. Baca about -- well, let me ask you
15 again: So you testified on direct about your
16 conversation with Mr. Baca; correct?

17 A. Yes, ma'am.

18 Q. And remind us of what questions you asked
19 Mr. Baca during that meeting?

20 A. Well, the only question I asked him --
21 because it really was a conversation for him to
22 convince me that he could go back to Southern. The
23 only real question, direct question, I asked him was
24 about gang recruitment.

25 Q. Okay. Did you ask him about how the gang,

1 SNM, was operating at Southern New Mexico
2 Correctional Facility?

3 A. No, ma'am, I didn't ask for that kind of
4 information.

5 Q. Let me show you what I'm going to mark as
6 Anthony Baca Exhibit C.

7 MS. DUNCAN: Your Honor, I understand there
8 is no objection. I'm going to move to admit Anthony
9 Baca Exhibit C.

10 THE COURT: Any objection?

11 MS. ARMIJO: No objection.

12 THE COURT: Any other defense lawyer have
13 any objection? Not hearing any, the Court will admit
14 Anthony Baca Exhibit C into evidence.

15 MS. DUNCAN: And just for the record, Your
16 Honor, it's Bates stamped 4476.

17 May I approach the witness, Your Honor?

18 THE COURT: You may.

19 Q. Mr. Roark, I'm handing you Anthony Baca
20 Exhibit C. Do you recognize this?

21 A. Yes.

22 Q. Tell us what it is.

23 A. It's a letter that Mr. Baca wrote me about
24 three or four weeks after we met.

25 Q. And what is -- is the letter in response to

1 your meeting with Mr. Baca?

2 A. Yes, ma'am.

3 Q. Can I grab that from you? Thank you.

4 And in this letter Mr. Baca is responding
5 to concerns that you raised during the meeting;
6 correct?

7 A. Yes.

8 Q. And the concerns that, according to the
9 letter, that you had raised were maintaining a
10 peaceful environment at Southern New Mexico
11 Correctional Facility Level 4?

12 A. That's what he wrote, yes, ma'am.

13 Q. Do you recall discussing that with
14 Mr. Baca?

15 A. He's the one that told me that he would
16 keep it peaceful.

17 Q. And in the letter, Mr. Baca raised -- at
18 the very bottom of the letter -- raised a concern
19 about the STIU staff's negative attitude towards him;
20 correct?

21 A. I don't see that. But, yes, I do remember
22 that.

23 Q. And did you do anything to address Mr.
24 Baca's concerns?

25 A. No, ma'am, I didn't.

1 Q. So after your meeting with Mr. Baca, you
2 testified you decided not to release him from Level
3 6; correct?

4 A. I did.

5 Q. Did you document that decision?

6 A. No, ma'am, I didn't. I didn't document it.

7 MS. DUNCAN: If I could just have a moment,
8 Your Honor?

9 THE COURT: You may.

10 MS. DUNCAN: No further questions, Your
11 Honor.

12 THE COURT: Thank you, Ms. Duncan.

13 Any other defendant have cross-examination
14 of Mr. Roark?

15 All right. Ms. Armijo, do you have
16 redirect of Mr. Roark?

17 REDIRECT EXAMINATION

18 BY MS. ARMIJO:

19 Q. Mr. Roark, I'm going to start with Exhibit
20 AB-C, which you were just questioned about. And it
21 says in there -- she was just asking you -- "she"
22 being Ms. Duncan -- about Mr. Baca's concerns about
23 STIU staff's negative attitude. Did you see that?

24 A. I do.

25 Q. In there, does Mr. Baca also talk about his

1 approach to resolve other problems with no violence?

2 Is that indicated there?

3 A. He does write that, yes.

4 Q. He says, "Nor the way I refer to various
5 issues to resolve others' problems with no violence.
6 There is a rush to judgment on their part." Is that
7 correct?

8 A. I do see that.

9 Q. And the date on this is February 7th of
10 2014?

11 A. It is.

12 Q. And what happened again on March 7th of
13 2014?

14 A. There was a murder of an SNM member.

15 Q. And would you consider that a violent act?

16 A. Yes, ma'am.

17 Q. Now, in reference to -- let me go back.
18 Defendant's Exhibit RP-E. In your memo, your white
19 memo, do you discuss Rudy Perez' walker?

20 A. I do.

21 Q. And was there something else that you
22 mentioned in that memo significant to Rudy Perez'
23 cell?

24 A. Yes. The initial information was that he
25 had taken parts off his walker, and there were scrape

1 marks in his cell.

2 Q. And what significance do scrape marks have
3 in a cell?

4 A. It's an indicator that there was metal
5 being sharpened.

6 Q. Metal being what, I'm sorry?

7 A. Sharpened.

8 Q. All right. And would metal be sharpened
9 for shanks purposes, possibly?

10 A. Yes, to make the metal into a point, to
11 make it a shank.

12 Q. I'm going to show -- what's my next
13 exhibit, I'm sorry?

14 THE CLERK: 46.

15 MS. ARMIJO: I move for the admission of
16 Exhibit 46, which is Offender Discipline History of
17 Rudy Perez.

18 THE COURT: Any objection?

19 MS. FOX-YOUNG: No, Your Honor.

20 THE COURT: Not hearing any, Government's
21 Exhibit 46 will be admitted into evidence.

22 Q. And in looking at this document, does it
23 show -- well, why don't you tell us was this document
24 is.

25 A. It's a document called "Offender

1 Disciplinary History." It's taken off of the
2 Criminal Management Information System. It's a
3 history of an inmate's misconduct.

4 Q. And does it show that he had misconduct on
5 September 17 of 2014, looking at the last line there?

6 A. That's the date of his hearing, his final
7 hearing. So that doesn't necessarily mean that's
8 when the misconduct occurred. That's when the
9 hearing occurred.

10 Q. All right. So the final hearing date was
11 on September 17. And what type of classification was
12 it, of a discipline action?

13 A. It was a major misconduct report.

14 Q. And was he found guilty?

15 A. Yes, ma'am, he was.

16 Q. And as a result of that, would there be any
17 sanctions that would be upon him?

18 A. There would be some sanctions.

19 Q. And what kind of sanctions would that
20 include?

21 A. It could be anything. It could be loss of
22 privileges, loss of good time, time in disciplinary
23 restrictive housing.

24 Q. Now, I believe that for Mr. Perez -- I'm
25 showing you Exhibit 43 -- you were asked on

1 cross-examination as to these pods, and if they were
2 handicapped pods. Or how would you describe them?

3 A. I would describe that the pods themselves
4 have handicapped access because they have ramps, and
5 other ADA.

6 Q. And the cells in there, are there special
7 considerations for handicapped accessibility? Is
8 there a distinction between cells in this pod and
9 cells in other pods?

10 A. Some of the cell doors are wider in order
11 to allow wheelchair access.

12 Q. Okay. And in looking at that, in these two
13 cells, it looks like -- if you can look there, Q 101
14 S and X 105 S, are you aware if those would have been
15 special cells for wider access?

16 A. I'd have to look at the cells, ma'am. I
17 can't say for sure yes.

18 Q. And is that the purpose of the pod being a
19 handicapped pod?

20 A. It is. And all those cells are on the
21 bottom tier. And that's where we have the access, on
22 the bottom tiers.

23 Q. Okay. So 101 and 105 are on the bottom?

24 A. Yes, ma'am.

25 Q. And is it your belief that you have the

1 access for that and special dimensions on the bottom?

2 A. Yes, ma'am, I do believe that's correct.

3 Yes, ma'am.

4 Q. Now, you were also asked about inmates that
5 are in what I will term as confinement. I believe
6 they were using the term "solitary confinement," but
7 restrictive conditions, and the mental health aspect
8 of it. Do you recall those questions?

9 A. Yes, ma'am.

10 Q. Okay. Are there efforts that New Mexico
11 Corrections Department has to combat any issues with
12 inmates who are on restrictive housing with limited
13 contact?

14 A. Yes, ma'am.

15 Q. Tell us about that.

16 A. Every inmate that's placed into restrictive
17 housing requires a review, a mental health review.
18 That's a policy, and that's also an American
19 Correctional Association Standard. So every inmate
20 that goes into restrictive housing is reviewed for
21 mental health. Mental health is part of unit
22 management team. Correctional officers in
23 restrictive housing units are required to do half
24 hour unit checks. That way, if there is a mental or
25 medical breakdown of some sort, they can immediately

1 call for assistance. Mental health is also required
2 to do regular rounds in restrictive housing units.

3 Q. And I believe you indicated that before
4 they go into the restrictive housing, there is an
5 assessment done?

6 A. There is an assessment done, yes.

7 Q. And what about caseworker -- what's a
8 caseworker in New Mexico Corrections Department?

9 A. A caseworker, it's more commonly called a
10 classification officer. Their job is to ensure that
11 the inmate is properly classified, is receiving their
12 services as they need; that they're -- help the unit
13 manager, make sure they're in the proper programming;
14 that their quarterly good time is being done; that
15 all -- any issues with the inmate, aside from
16 security issues, are being addressed.

17 Q. Okay. Is it fair to say they're there to
18 assist the inmate and inmate needs, in addition to
19 other --

20 A. They're not advocates for the inmates. But
21 yeah, they're there to assist inmates.

22 Q. And is there a caseworker assigned to
23 people in restrictive housing?

24 A. Yes.

25 Q. Was there a caseworker assigned to Rudy

1 Perez?

2 A. There would have been.

3 Q. And so would that have been part of his --
4 when he was staying at the North facility restrictive
5 housing, would that have been part of what was
6 happening with him?

7 A. Yes, ma'am.

8 Q. And how often is it that there is some sort
9 of issue, mental issue, with someone in restrictive
10 housing?

11 A. I would say it happens, but it's not an
12 everyday or common incident. I don't know if I can
13 give you numbers. But it's -- it happens, but it's
14 rare.

15 Q. It's rare?

16 A. Yeah. It's not a daily occurrence, ma'am.

17 Q. And what happens when there is a mental
18 health crisis?

19 A. Well, it depends on the nature of the
20 crisis. Mental health is called -- mental health is
21 called, and they meet with the inmate and evaluate
22 the inmate in most circumstances.

23 Q. And are there special provisions made for a
24 person that is having mental issues, that is in
25 restrictive housing for their future housing? In

1 other words, in what was formerly Level 6, did you
2 have any way to assist an inmate as far as housing
3 that was having mental issues because of the solitary
4 nature of it?

5 A. Yeah. There is actually two ways. If the
6 inmate we thought was suicidal or going to harm
7 themselves, we would isolate him in an area where we
8 could put him on a mental health watch. And the
9 other way, if they're just kind of dealing with
10 things like I mentioned earlier, depression and those
11 kind of things, and they were serious enough that the
12 regular treatment or the regular meeting with the
13 mental health professional wasn't working, we have an
14 area called the Alternative Placement Area. This is
15 an area where inmates can be placed in Level 6, at
16 the time, where they can get mental health treatment,
17 including things like group treatment, until they are
18 stabilized, and then they would go back to Level 6.

19 Q. And would you be made aware of situations
20 when that happens?

21 A. Not from my position as Director of Adult
22 Prisons. I usually wouldn't be made aware. That
23 would be done at the facility level.

24 Q. You were asked about changes in July of
25 2015, as to lifting up -- stepping down, I guess you

1 would call it, on the SNM. And then something
2 occurred in reference to Julian Romero. Do you
3 recall that?

4 A. I do.

5 Q. And where was Julian Romero being housed?

6 A. At Southern New Mexico Correctional
7 Facility.

8 Q. And are you aware of when Southern lifted
9 the restrictions, in relationship to the Julian
10 Romero assault, when that occurred?

11 A. It was within a couple hours.

12 Q. The changes you were talking about -- going
13 back to the mental health issue -- would that change
14 the housing of a person? You were talking about how,
15 if they had a mental breakdown, that you would move
16 the person?

17 A. We would.

18 Q. And would that be included in the offender
19 physical location history? In other words, would the
20 move to the different part, to deal with the mental
21 issue, would that be reflected in the offender
22 physical location history?

23 A. It would. It would show a change of pod,
24 or that he was moved to the back of the infirmary for
25 a little bit.

1 Q. And in regard to Rudy Perez, from 2015 to
2 2016, is there any indication that he was ever moved
3 for mental health reasons?

4 A. There is no indication on this form, no,
5 ma'am.

6 Q. Are there other reasons that people are
7 placed at the northern facility, other than being a
8 level -- at the Level 6 for stepdown? Do you hold
9 other types of inmates there?

10 A. We do. We have to place inmates that
11 Interim Level 6 pending investigation. We house
12 inmates there who are in prehearing detention.
13 Sometimes an inmate will commit an act at their
14 particular facility that we consider so serious and
15 egregious, and egregious against public safety that
16 we feel like he needs to go to the North facility for
17 the sake of protecting the public and protecting that
18 facility.

19 Q. And I believe you were asked by Mr. Jewkes
20 about Mr. Sanchez -- the statement about Mr. Sanchez
21 orchestrating a murder in your memo?

22 A. Yes.

23 Q. Could someone be orchestrating a murder and
24 not be an actual participant in the stabbing?

25 MS. FOX-YOUNG: Your Honor, objection,

1 relevance to this whole line.

2 THE COURT: Well, it's been asked, and it's
3 been on the floor. I guess everybody thought it was
4 relevant when they were cross-examining. Overruled.

5 A. That's possible, yes, ma'am.

6 Q. In reference to -- I'm showing you
7 Government's Exhibit 47 --

8 MS. BHALLA: Your Honor, we're going to
9 object to that exhibit because it doesn't have any
10 identifying information for our client. I don't know
11 that that pertains to my client necessarily. It's
12 got a handwritten note with the identification on it,
13 but --

14 THE COURT: Well, let's see if the witness
15 can authenticate it.

16 Q. Are you familiar, first, with that type of
17 document?

18 A. I am.

19 Q. And what type of document is that?

20 A. It's from CMIS; it shows what their
21 privilege level is.

22 Q. And when you say "their privilege level,"
23 who is it that you're talking about?

24 A. An individual inmate.

25 Q. Does that have a name associated with it?

1 A. It has a handwritten name.

2 MS. ARMIJO: Your Honor, I'm going to move
3 for the admission of Government's Exhibit 47.

4 THE COURT: Is that the one that Mr. Roark
5 is looking at?

6 MS. ARMIJO: Yes.

7 THE COURT: What is the name on it?

8 MS. ARMIJO: Handwritten, it says "Carlos
9 Herrera, and there is a signature on there.

10 MS. BHALLA: I'm going to object again. I
11 mean --

12 THE COURT: Do you want to voir dire the
13 witness?

14 MS. BHALLA: Yes, Your Honor.

15 VOIR DIRE EXAMINATION

16 BY MS. BHALLA:

17 Q. Mr. Roark, did you write Carlos Herrera's
18 name on that document?

19 A. I did not.

20 Q. Is that your signature?

21 A. No, ma'am.

22 Q. Do you know who prepared that document?

23 A. It's a captain, but I don't recognize the
24 signature.

25 Q. And were you shown this document prior to

1 today?

2 A. Not prior to today, no.

3 Q. When were you shown this document?

4 A. At lunch.

5 MS. BHALLA: Okay. I don't think they've
6 laid a sufficient foundation, Your Honor. I don't
7 think he has any personal knowledge of the document.
8 He can't recognize -- he didn't prepare it. He
9 wasn't there when it was signed. He's not sure who
10 signed it, I don't think. Maybe I'm a little
11 confused about that. But I don't think they've laid
12 a sufficient foundation. We're not sure that that
13 actually belongs to Mr. Herrera.

14 THE COURT: Well, is this a document that's
15 been produced before in discovery?

16 MS. BHALLA: Not that I've seen, Your
17 Honor, no.

18 MS. ARMIJO: Your Honor, they're going to
19 check. While they're checking, I'm going to ask a
20 couple more questions about some of the defense
21 exhibits.

22 BY MS. ARMIJO:

23 Q. In CH-D and E it has placement history for
24 Mr. Herrera; is that correct?

25 A. Yes, ma'am.

1 Q. Okay. And what housing level was he?

2 A. He was Level 6.

3 Q. And this is back on what date? And I'll
4 show you the bottom.

5 A. December 12, 2014.

6 Q. And in looking at Government's Exhibit 44,
7 just to compare dates, this is December 2014. Where
8 was he in December of 2014? Can you tell?

9 A. He was at -- December of 2014, he was at
10 Southern New Mexico Correctional Facility.

11 Q. And does Southern New Mexico Correctional
12 Facility, do they have a Level 6 program?

13 A. They don't have a Level 6 program, no.

14 Q. Okay. So even though he was classified
15 Level 6, on December 12 of 2014, was he still being
16 held at a Level 4 facility?

17 A. He was being housed at Southern New Mexico
18 Correctional Facility, and it was a Level 4. But we
19 had all the SNM on lockdown.

20 Q. Okay. So -- and I guess that would be a
21 question that I have. So even if he was at Southern,
22 he would have been treated as a Level 6 on lockdown,
23 or is that different?

24 A. No, everyone in SNM was on lockdown.

25 Q. Okay. And the Level 6 start date that you

1 have here, were these because he was in SNM -- I'm
2 referring to CH-E -- was that because he was a SNM
3 member?

4 A. Yes, ma'am.

5 Q. Now, going to January of 2016, it looks
6 like he went to PNM -- "he" being Carlos Herrera?

7 A. Yes, ma'am.

8 Q. And then at that point, where is he housed?
9 What -- which of your facilities at PNM was he
10 housed?

11 A. He was housed at the South facility.

12 Q. And what is the South facility?

13 A. That was the Level 4. At that time, it had
14 transitioned -- it was being transitioned to the
15 Level 4s for SNM.

16 Q. So, at least in January of 2016, based upon
17 where he was sent, and his location, what level was
18 his classification?

19 A. He should have been Level 4, ma'am.

20 Q. And I'm going to show you Government's
21 Exhibit 47 and 44 together. And does it appear -- in
22 addition to the handwritten name, does it appear to
23 be consistent with that of Carlos Herrera's, given
24 where he was placed? And if you can't tell, that's
25 fine?

1 A. It's off a little bit. But that could have
2 been just bad mapping by the caseworker.

3 Q. But based on Exhibit 44, in January of
4 2016, what was Mr. Herrera's classification?

5 A. He was Level 4.

6 MS. ARMIJO: Thank you. No further
7 questions.

8 THE COURT: I guess my thoughts are that
9 it's sufficiently authenticated. There is no -- was
10 the document produced earlier?

11 MS. ARMIJO: 47?

12 THE COURT: Yeah, was it produced earlier.

13 MS. ARMIJO: Yes.

14 THE COURT: It's not been a question of its
15 genuineness, I'll admit it in evidence subject to the
16 criticisms you have. So I'll take it into account
17 when I make a ruling as to the weaknesses of the
18 document.

19 MS. BHALLA: That's been marked as 47,
20 that's what I'm confused about.

21 MS. ARMIJO: Yes. Government's 47.

22 THE COURT: So I'm going to admit it into
23 evidence.

24 Ms. Fox-Young?

25 MS. FOX-YOUNG: Brief recross, Your Honor?

1 THE COURT: Yeah.

2 MS. FOX-YOUNG: That's the only reason I
3 was standing. I don't have any objection.

4 THE COURT: Do you have anything further to
5 say on the exhibit, Ms. Bhalla?

6 MS. BHALLA: No, Your Honor, I don't think
7 so. Thank you.

8 THE COURT: All right. Ms. Fox-Young.

9 EXAMINATION

10 BY MS. FOX-YOUNG:

11 Q. Mr. Roark, you were asked some questions
12 about a hearing that was held on September 14, 2014,
13 for Rudy Perez. Do you remember that?

14 A. I do.

15 Q. It's not your testimony that Mr. Perez was
16 held, beginning in June 2015, six months -- eight
17 months after that hearing, at PNM, as a result of any
18 disciplinary violation discussed at that hearing, is
19 it? Do you know one way or another if that September
20 2014 hearing had anything to do with Mr. Perez being
21 held at PNM in June 2015?

22 A. I don't know, ma'am.

23 Q. You don't know. Have you seen any
24 documentation that would indicate that Mr. Perez was
25 held beginning in June 2015, and for a subsequent 10

1 months, as a result of something in September 2014?

2 A. No, ma'am. I don't know of anything.

3 Q. Okay, thank you.

4 You talked a little bit about -- and
5 correct me if I'm misstating your testimony -- but
6 you talked about, at Level 6, every inmate has -- did
7 you say a caseworker or a classification officer?

8 A. They're synonymous terms.

9 Q. And that person is an NMCD employee?

10 A. That's correct.

11 Q. And everybody is assigned one?

12 A. That's correct.

13 Q. And you said that person deals with any
14 issues aside from security that need to be addressed;
15 is that right?

16 A. That's correct. That's an
17 oversimplification, but yes.

18 Q. Generalizing?

19 A. Generalizing, yes.

20 Q. And would that then include, getting a
21 little bit more specific, the inmate's physical
22 needs?

23 A. No. Other than the obligation if they saw
24 the inmate had a physical need that needed to be
25 addressed, they'd call medical.

1 Q. Something that was obvious?

2 A. Or the inmate complains, yes.

3 Q. Okay. If it came to their attention?

4 A. Correct.

5 Q. And you talked about mental health needs,
6 and that person observing any mental health needs,
7 and potentially moving them to another area of PNM,
8 right?

9 A. That wouldn't be them. That would be the
10 mental health professional that would do that.

11 Q. Okay. So all that testimony about the
12 Corrections Department responding to mental health
13 needs and mental health breakdowns, and moving
14 somebody to a different place at PNM as a result of
15 mental health needs, that's not true? Correct me.

16 A. It is true.

17 Q. Okay. But that's not the classification
18 officer that does that?

19 A. They would do it on mapping. But what
20 happens -- I guess I should explain. What happens is
21 if an inmate is having a mental health issue, and for
22 whatever reason, how it came to our attention, was it
23 the inmate complaints or whether we notice something
24 unusual, at that point someone intervenes, a mental
25 health professional. They evaluate the inmate. If

1 they determine, hey, this inmate needs more help than
2 I can give them in the particular unit he is in, they
3 can do a request to place him in Alternative
4 Placement Area in order for him to get additional
5 therapy, additional attention to his needs.

6 Q. Sure. And all I'm trying to get at is it's
7 the classification officer who does that, right, the
8 New Mexico Corrections Department employee?

9 A. The answer to that is yes and no. The
10 classification officer knows where to place the
11 inmate, right. But it's the mental health person who
12 says he needs to go to this unit.

13 Q. Got it. And the classification officer or
14 caseworker facilitates providing treatment; they
15 would get that inmate to a mental health
16 professional, right?

17 A. Well, it doesn't necessarily have to be
18 them. It could be a correctional officer or a unit
19 manager, anyone who comes to the attention, that
20 notifies this inmate has needs.

21 Q. Any NMCD employee?

22 A. Yes.

23 MS. FOX-YOUNG: No more questions, Your
24 Honor. Thank you.

25 THE COURT: All right. Thank you, Ms.

1 Fox-Young.

2 Ms. Armijo, any further redirect?

3 EXAMINATION

4 BY MS. ARMIJO:

5 Q. You said unit manager. Do inmates have
6 contacts with unit managers as well?

7 A. They do.

8 Q. Up at PNM, how often?

9 A. They're supposed to make weekly rounds, but
10 they also do the committees, the review committees
11 for inmates.

12 Q. And you indicated previously that it's
13 every half hour they're checked on?

14 A. Every half hour a security person has to do
15 rounds.

16 MS. ARMIJO: No further questions.

17 THE COURT: Thank you, Ms. Armijo.

18 If I didn't make it clear, Government's
19 Exhibit 47 will be admitted into evidence.

20 All right. Mr. Roark, you may step down.
21 Is there any reason Mr. Roark cannot be excused from
22 the proceedings?

23 MS. ARMIJO: No, Your Honor.

24 THE COURT: Anybody on the defense side
25 want to -- any problem with him being excused? All

1 right. You are excused from the proceedings. Thank
2 you for your testimony.

3 All right. Ms. Armijo, does the Government
4 have further witnesses or evidence it wishes to
5 present on the motions to suppress?

6 MS. ARMIJO: No, Your Honor.

7 THE COURT: Thank you, Ms. Armijo.

8 Mr. Villa, Ms. Bhalla, do the defendants
9 have witnesses they wish to present?

10 MR. VILLA: Your Honor, we do. I think
11 both defendants do. But I think we've discussed it,
12 and we'll put on the next three.

13 THE COURT: All right.

14 MR. VILLA: So, Your Honor, we call
15 Defendant Rudy Perez.

16 THE COURT: Mr. Perez, if you'll come up to
17 the witness box. Before you're seated, Ms.
18 Standridge will swear you in.

19 RUDY PEREZ,
20 after having been first duly sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 THE CLERK: Please be seated and state your
24 name for the record.

25 THE DEFENDANT: Rudy Perez.

1 THE COURT: Mr. Villa.

2 BY MR. VILLA:

3 Q. Good afternoon, Mr. Perez.

4 A. Good afternoon.

5 Q. And you might have to get a little closer
6 to the mic, just to make sure we hear you. Okay?

7 A. All right.

8 Q. How old are you?

9 A. 48; I'll be 49 next month.

10 Q. And in February of 2016, when the
11 conversations that are at issue in this hearing took
12 place with Mr. Cordova, how old were you?

13 A. 47, I guess.

14 Q. 47?

15 A. Um-hum.

16 Q. How far did you go in school?

17 A. Tenth grade.

18 Q. Tenth grade?

19 A. Yes.

20 Q. Did you ever get a GED?

21 A. No.

22 Q. Now Mr. Perez, do you recall when you were
23 in PNM in around January, February 2016, when Mr.
24 Cordova was placed next to you?

25 A. Yes.

1 Q. And what cell and pod were you in at the
2 time?

3 A. I was in Q pod, 101.

4 Q. The same pod that Mr. Cordova testified
5 yesterday that you all were in?

6 A. Yes.

7 Q. And when Mr. Cordova was placed next to
8 you, did he give you anything?

9 A. Yes.

10 Q. What did he give you?

11 A. Suboxone.

12 Q. How did he give it to you?

13 A. On a pole through the vent.

14 Q. The vent above the desk that we saw on the
15 video?

16 A. Yes.

17 Q. And you said on a pole. Are you talking
18 about what?

19 A. Paper rolled up, call it a fishing pole,
20 fish through the vent.

21 Q. Now, do you recall how much Suboxone he
22 gave you?

23 A. More than a quarter.

24 Q. When you say a quarter, a quarter of what?

25 A. Strip.

1 Q. And did he give you that Suboxone before he
2 talked to you about the Javier Molina homicide?

3 A. Yes.

4 Q. Did you take that Suboxone before you
5 talked to him about the homicide?

6 A. Yes.

7 Q. How did you feel after you took the
8 Suboxone?

9 A. High.

10 Q. You said "high"?

11 A. Yes.

12 Q. And how many different times did Mr.
13 Cordova give you Suboxone?

14 A. A couple of those days that he was there.

15 Q. So it was more than one day?

16 A. Yes.

17 Q. And on a particular day, did you all
18 discuss the Javier Molina homicide a couple of
19 different times?

20 A. Yes.

21 Q. And did he give you Suboxone more than once
22 on that day?

23 A. Yes.

24 Q. Okay. So do you remember about the time of
25 day he gave you -- the first time he gave you

1 Suboxone on that particular day?

2 A. If I remember right, the first one was
3 right after lunch.

4 Q. And was it the quarter strip?

5 A. Yes.

6 Q. When was the second one?

7 A. After dinnertime, right after they passed
8 out meds.

9 Q. And you took that?

10 A. Yes.

11 Q. Now, I know the answer to this, but you
12 don't remember the specific date that that actually
13 happened?

14 A. No, sir.

15 MR. VILLA: May I have just a moment, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. VILLA:

19 Q. Did you get high each time you took the
20 Suboxone?

21 A. Yes.

22 Q. And each time you spoke to Mr. Cordova
23 about the Javier Molina murder, were you high?

24 A. Yes.

25 Q. There was also testimony yesterday about

1 you providing Mr. Cordova some ear buds?

2 A. Yes.

3 Q. Why did you provide him the ear buds?

4 A. He had hooked me up, and I didn't have no
5 money, no canteen. So I looked out for him. That's
6 the only thing I had.

7 Q. What do you mean he hooked you up?

8 A. He got me high.

9 Q. With the Suboxone?

10 A. Yes.

11 MR. VILLA: That's all the questions I
12 have, Judge.

13 THE COURT: All right. Thank you,
14 Mr. Villa.

15 Do any of the other defendants have
16 cross-examination of Mr. Perez?

17 Does the United States have questions?

18 MR. CASTELLANO: Yes, Your Honor.

19 EXAMINATION

20 BY MR. CASTELLANO:

21 Q. Good afternoon, Mr. Perez. So you said on
22 at least one occasion he gave you Suboxone after
23 dinnertime, after your meds; is that correct?

24 A. Yes.

25 Q. Now, what meds were you taking?

1 A. A bunch.

2 Q. Any of them opiates?

3 A. No, they don't let us have opiates there.

4 Q. All right. Let's talk about your
5 medications then, as best as you remember. Go ahead
6 and tell us what each of the meds was.

7 A. Tramadol, Gabapentin, psych meds, blood
8 pressure medication, seizure med, diabetes
9 medication.

10 Q. I take it this was not the first time that
11 you've had Suboxone in prison?

12 A. No, sir.

13 Q. And how did the topic come up about him
14 offering Suboxone to you?

15 A. Oh, when they brought him in that morning,
16 he talked to the homies upstairs. And then he tells
17 them: Who's here?" He banged on the wall.

18 I say, "What's up?"

19 He says, "'Shadow.'"

20 I said, "What's up, fool?"

21 He says, "Nada." He says, "You wanna
22 channel change?"

23 I said, "Hell, yeah."

24 He says, "Give me a minute."

25 Q. So the first day -- the very first day you

1 were there, he gave you drugs?

2 A. Yes.

3 Q. And that very first day is when you made
4 incriminating statements to him?

5 A. I don't remember when they were done.

6 Q. One thing we'll have to get to the bottom
7 of is whether you gave statements the same day that
8 you were high. So do you know whether that day you
9 got high and gave statements?

10 A. Got high every day he was there.

11 Q. Every day?

12 A. Pretty much.

13 Q. Well, you told your attorney a couple of
14 times, and now you're telling us every. So let's --

15 A. He was only there three days, man.

16 Q. Are you sure?

17 A. Three days.

18 Q. Okay. You know the records show otherwise;
19 correct?

20 A. Yeah.

21 Q. So you're saying --

22 A. The three days.

23 Q. What do you recall about the statements you
24 gave Mr. Cordova?

25 A. I really don't remember much.

1 Q. Now, even though you don't remember, it's
2 fair to say what you told him was pretty accurate,
3 wasn't it?

4 A. What I was told?

5 Q. Well, in other words, you talked about
6 giving your -- pieces of your walker to be served as
7 shanks. Do you recall that?

8 A. That's what they said.

9 Q. Right. And you've seen the transcripts?

10 A. Yes.

11 Q. And you've heard the recordings?

12 A. Yes.

13 Q. And you admitted to giving pieces of your
14 walker to be used as shanks?

15 A. I lied.

16 Q. Okay. But your lie was consistent with
17 what the other evidence shows in this case; you know
18 that, right?

19 A. I lied.

20 Q. So you lied, but it's consistent with the
21 other evidence in this case?

22 MR. VILLA: Objection, argumentative.

23 THE COURT: Well, it's cross-examination.
24 Overruled.

25 Q. In other words, how did that happen? You

1 lied, but it's consistent with everything else we
2 know from the case? That's what I want to get to the
3 bottom of.

4 MR. VILLA: Same objection.

5 THE COURT: Overruled.

6 A. If you remember when the crime was
7 committed, alleged crime was committed, and when
8 those recordings were done, there was a whole thought
9 of he said, they said, she said, a lot of things were
10 repeated.

11 Q. Right. But you repeated the right things,
12 including the fact that --

13 A. Because I was told from certain people.

14 Q. Well, how did you lie, then, if you got it
15 right?

16 A. No. I was told by certain people, and I
17 repeated it. But it was a lie. I didn't give
18 nothing.

19 Q. So let's back up a little bit. You said
20 that "Red" was involved with the murder; correct?

21 A. No.

22 Q. You said "Blue" was involved with the
23 murder?

24 A. No.

25 Q. You said Mr. Sanchez, "Dan Dan," was

1 involved with the murder?

2 A. No.

3 Q. You know the transcripts show otherwise?

4 A. Yes.

5 Q. So what I'm saying is, in the transcript
6 you said these things?

7 A. I repeated what I was told.

8 Q. And what I'm asking is whether you said
9 that in the transcript -- let's focus on the
10 transcript, first, regardless of whether you say it's
11 a lie -- you said in the transcript that Mr.
12 Rodriguez was involved with the murder? Yes?

13 A. That's what the transcript says.

14 Q. And you said on the transcript that Mr.
15 Sanchez was involved in the murder?

16 A. I don't remember that part.

17 Q. And you also said that "Pup" was upset
18 because this should have been done a year earlier?

19 A. Again, I was repeating what was being said.

20 Q. And when asked whether or not you would
21 have given up your walker pieces as shanks, you said
22 you would not have unless it was a justified move?

23 A. That was a lie.

24 Q. Also, when Mr. Cordova asked you about
25 people talking about you -- because there was an

1 indication that you might be snitching; correct? Do
2 you remember that?

3 A. Yes.

4 Q. And I'll show you on page 20536 of DeLeon,
5 you indicated to him that you talked to "Pup," and he
6 said not to worry about it, basically, because you
7 were good, right? Show you right here.

8 A. Yes.

9 Q. All right. So in other words, you made a
10 conscious decision to defend your honor when other
11 people alleged that you were snitching?

12 A. You have to.

13 Q. Right. And so you made a conscious
14 decision to defend yourself against those
15 allegations?

16 A. Again, I lied.

17 Q. So you were snitching then?

18 A. No.

19 Q. You were defending your honor?

20 A. Yes.

21 Q. And consistent with what you're telling us
22 today, you told him, "I don't know nothing, brother.
23 I didn't see nothing. I don't know nada. And that's
24 the way it's going to stay."

25 A. That's the truth.

1 Q. Right, because that's consistent with the
2 code, right?

3 A. No. That's the truth.

4 Q. Well, you said it's consistent with the
5 code in your statement here. I'll show you in a
6 second. Let me ask you this also: If you were under
7 the influence of Suboxone, you were consciously lying
8 to Mr. Cordova?

9 A. When they took me to the North, I started
10 hearing the lies and the gossip and the bullshit. I
11 had already, you know what I mean, I've got to cover
12 my own ass. Like I said, I lied.

13 Q. So you consciously lied to him; you made a
14 decision to deceive Mr. Cordova?

15 A. Anybody that asked, that's what I said.

16 Q. But you made a conscious decision to
17 deceive Mr. Cordova?

18 A. To protect myself.

19 Q. But that means you did it?

20 A. No.

21 Q. By that I mean you deceived Mr. Cordova?

22 A. No. If anybody asked, that's what I said.
23 I lied.

24 Q. And do you have a reputation for being a
25 drug user from the S?

1 MR. VILLA: Objection, Your Honor. Outside
2 the scope.

3 THE COURT: How is this related to the
4 scope?

5 MR. CASTELLANO: One, it has to do whether
6 or not he truly ingested Suboxone; and two, it may
7 affect how Suboxone affected him.

8 THE COURT: Overruled.

9 A. Do you want to come see my arms?

10 Q. I just want the answer.

11 A. I'm a full-blown addict.

12 Q. And so how much did you use close in time
13 to when Mr. Cordova gave you Suboxone?

14 A. Pretty much gave me around a quarter strip
15 each time.

16 Q. But you didn't inject it. You said --

17 A. No.

18 Q. -- you said you wanted to show your arm.

19 A. Yes. I'm an addict, man.

20 Q. The question is: Other than what you claim
21 Mr. Cordova gave you, when was the most recent use
22 before that time?

23 A. A while.

24 Q. How long?

25 A. A while.

1 Q. Two days?

2 A. After I got out of the hospital.

3 Q. Your records don't show that, you know
4 that?

5 A. I got sick -- September 4 is when I had
6 surgery. I stayed in the hospital a year. November,
7 2012, I had just got back to Southern; stayed at
8 Southern until they shipped me to the North. And I
9 was on pain medication pretty much the whole time.

10 Q. What kind of medication was for the pain?

11 A. The gabapentin, the Tramadol.

12 Q. You also recall that, when Mr. Sanchez
13 returned from out of state, he asked you why certain
14 guys weren't charged. Do you remember that? This is
15 DeLeon 20550.

16 A. Where is that at?

17 Q. "'Dan Dan' is asking you, or not, why did
18 'Junior' and 'Creeper' get charged, but why didn't
19 'Blue' and 'Red' get charged?" Do you remember that?

20 A. That's what it said.

21 Q. So you're indicating to him that you had a
22 conversation with "Dan Dan," and you're recollecting
23 that. Do you remember that conversation?

24 A. Yes.

25 Q. So were you intimidated by Mr. Cordova?

1 A. No.

2 Q. He's not intimidating, is he?

3 A. No.

4 Q. You have to speak up so she can get it.

5 A. No.

6 Q. And so he, otherwise, he didn't intimidate
7 you into saying these things?

8 A. No.

9 Q. And yesterday you heard him say that one
10 way to get drugs from one cell to the other is
11 through the vent; correct?

12 A. That's pretty much the main way we do it,
13 man.

14 Q. So after hearing that yesterday, that's
15 your testimony today, after hearing what Mr. Cordova
16 said?

17 MR. VILLA: Objection, mischaracterizing
18 argumentative.

19 A. That's the truth.

20 THE COURT: I don't think it's
21 argumentative. Overruled. I'll let you deal with
22 any inconsistency in cross. Overruled.

23 Q. And you knew about the paperwork on Javier
24 Molina, did you not?

25 A. No.

1 MR. VILLA: Objection, outside the scope.
2 He's asking whether he knows about a specific fact,
3 not about the statements.

4 MR. CASTELLANO: I'm showing it here on the
5 screen, Your Honor. There is discussion about the
6 paperwork.

7 MR. VILLA: So, Your Honor, if the question
8 is about a discussion with Mr. Cordova --

9 THE COURT: I think the paperwork may be
10 exceeding it. We better stick with what Mr. Villa
11 brought out.

12 MR. CASTELLANO: Sure, Your Honor.

13 Q. Do you see here, Mr. Perez, when you're
14 discussing the paperwork?

15 MR. VILLA: Objection, outside the scope.

16 THE COURT: Sustained. You don't have to
17 answer these questions.

18 Q. Who is "Creeper," Mr. Perez?

19 MR. VILLA: Objection, outside the scope.

20 MR. CASTELLANO: Well, Your Honor, these
21 are all Mr. Perez' statements. And so the question
22 is whether or not these were voluntarily given. If
23 they're coherently made --

24 THE COURT: I certainly think your
25 questions are within the scope of this motion. I

1 don't think that they are within the scope of the
2 direct examination. Given he's a defendant, I'm
3 going to guard him carefully. And so I'll sustain
4 the objection. But I do note that, you know, he's
5 leaving a lot of questions on the table.

6 MR. VILLA: Well, the question is who is
7 "Creeper?"

8 THE COURT: I know, but I mean you're
9 leaving a lot of questions for him. But that's your
10 call. But I'll sustain the objection.

11 Q. Do you recall whether at the time of the
12 Molina murder that you were sick?

13 MR. VILLA: Objection, outside the scope.

14 THE COURT: Well, he brought up his health,
15 so I'll let him ask this question. Overruled.

16 Q. Do you recall about the time the Molina
17 murder happened, that you had been sick shortly
18 before that?

19 A. Yes.

20 Q. And what was the problem back then?

21 A. I had a bowel obstruction.

22 Q. And so, when you mentioned that to Mr.
23 Cordova, that was true. I'll go ahead and show you
24 here on the visualizer. It's Bates stamp 20557. And
25 you told him, "I just got out of the hole. I was

1 real sick."

2 A. I wasn't in the hole. I just got out of
3 the hospital.

4 Q. Okay. Were you real sick?

5 A. Yes.

6 Q. The fact that you were sick was true, about
7 the time of the Molina murder?

8 A. Yes.

9 Q. Can you tell the Court whether it was the
10 truth or a lie when you told Mr. Cordova that Mr.
11 Baca was not happy that the Molina murder hadn't been
12 taken care of already?

13 MR. VILLA: Objection.

14 A. You have to ask Billy Cordova that.

15 THE COURT: Overruled.

16 A. Did you hear me?

17 Q. I did hear you.

18 A. You have to ask Mr. Cordova that.

19 Q. Your statement here -- this is your
20 statement, not Mr. Cordova's. "Find out why the fuck
21 it wasn't taken care of. Is that what 'Pup' told
22 him? Huh, is that what" --

23 A. Again, you would have to ask Billy Cordova,
24 because he's the one who told me that.

25 Q. And when Mr. Cordova told you, "What did

1 'Pup' say," your response was, "He didn't like it"?

2 A. Again, that's what they said.

3 Q. Who is they?

4 A. Billy Cordova.

5 Q. Well, you're telling Mr. Cordova that
6 someone else told you that Mr. Baca wasn't happy?

7 A. Eric Duran recorded a conversation between
8 Billy Cordova and Raviesso (phonetic), when we were
9 in X pod. Billy Cordova was the one telling us, when
10 I had just got there.

11 Q. That "Pup" wasn't happy --

12 A. And your records will prove that.

13 Q. -- that the hit hadn't been done a year --

14 A. No, he just said that "Pup" wasn't happy.

15 Q. About what?

16 A. He just said "Pup" wasn't happy about it.

17 Q. Was it the truth or a lie when you told Mr.
18 Cordova, "No one deserves a free pass on a
19 violation"?

20 A. Again, you should have had the first part
21 of the conversation.

22 Q. Is it your testimony that someone should or
23 should not get a free pass on a violation of the
24 rules of the SNM?

25 A. I might call that. I don't know.

1 Q. Do you know the rules of the SNM?

2 MR. VILLA: Objection, outside the scope.

3 THE COURT: Sustained.

4 Q. Were you lying or were you telling the
5 truth when you discussed the members of the tabla
6 with Mr. Cordova?

7 MR. VILLA: Same objection.

8 THE COURT: I'm going to allow these
9 questions since he is saying some things are true and
10 some things are false. So I'll allow this.
11 Overruled.

12 Q. Okay. I'll ask the question again. So
13 once you have reviewed the transcript, this is Bates
14 stamp 20562. Was that the truth or a lie when you
15 told Mr. Cordova, "People who were on the tabla"?

16 A. I guess that would be on who you asked.

17 Q. Well, we're asking you today.

18 A. Again, I was repeating what I was told.

19 Q. So being a member of the SNM then, you
20 didn't know who the members of the tabla were?

21 A. Since you're pointing out this transcript,
22 it's like I told him, I wasn't involved in nothing.
23 I stayed in my room. I had just got out of the
24 hospital. I didn't know nothing. I didn't care
25 about nothing. I was just trying to get better, man.

1 When I say I lied, I was going by what other people
2 said. So whether it's true, not, I don't know. I
3 should have never repeated it.

4 THE COURT: Mr. Castellano, is this a good
5 time for us to take our afternoon break?

6 MR. CASTELLANO: Sure, Your Honor.

7 THE COURT: All right. We'll be in recess
8 about 15 minutes.

9 (The Court stood in recess.)

10 THE COURT: All right. Let's go on the
11 record. Look around, make sure everybody has got an
12 attorney. Looks like everybody does to me.

13 Ms. Jacks, you're leaving at 3:45 for a
14 flight. All right. Be safe going back.

15 Let me give you a little information. Some
16 of y'all were asking Ms. Standridge what the schedule
17 was for next week. I haven't been able to get a
18 confirmation of this from Ms. Wild, but what my
19 office back in Albuquerque is showing is that I have
20 hearings on 12/18 and 12/19. So I'm expecting to be
21 here myself at 9:00 on Monday morning. I'm traveling
22 back on 12/20. And then I have hearings in the
23 afternoon at 1:30, 2:30 and 3:30 on 12/20. So that's
24 what Ms. Standridge is showing. So I hope that's
25 what everybody else is showing as well. But somebody

1 indicated that they thought we might be doing
2 something on Wednesday. But it's not on my calendar,
3 and I haven't able to confirm it with Ms. Wild. But
4 it's not anything I can talk to today.

5 MS. JACKS: Can I ask a question?

6 THE COURT: You may.

7 MS. JACKS: When I found out about those
8 dates, I did submit a travel request to the CJA
9 office. I haven't heard back yet. I inquired this
10 morning again, and still have not heard back. So I'm
11 just wondering, if Ms. Wild's absence --

12 THE COURT: I couldn't tell you on that.
13 You can try to call Ms. Wild. She's supposed to be
14 back in Albuquerque today. I can tell you this, the
15 Fed Ex has already come today and it had no vouchers
16 in it. It's already turned around, and I'm about to
17 open -- the Fed Ex that I sent back had no vouchers
18 in it. So as far as on my desk, unless some have hit
19 my desk back in Albuquerque today, there is no
20 vouchers. I'm caught up.

21 MS. JACKS: Right. I think this is just a
22 travel request. I'm not sure how those are approved.

23 THE COURT: Same way. I approve them.
24 It's no different than any other. So my desk here in
25 Las Cruces is clean. I can't tell you what's on my

1 desk building up today. But there won't be any Fed
2 Exes sent out today. So I won't be back in till
3 tomorrow. I've got to start doing some stuff at
4 12:30. So if there is travel vouchers on my desk
5 today, I'm probably not going to get to them until
6 later in the afternoon tomorrow or tomorrow night.

7 All right. Mr. Perez, I'll remind you
8 you're still under oath. Mr. Castellano, if you wish
9 to continue your cross-examination of Mr. Perez, you
10 may do so at this time.

11 MR. CASTELLANO: Thank you, Your Honor.

12 THE COURT: Mr. Castellano.

13 BY MR. CASTELLANO:

14 Q. Mr. Perez, are you willing to execute a
15 medical release so that we can check your
16 medications?

17 MR. VILLA: Objection, Your Honor.

18 THE COURT: I'll let him answer that
19 question.

20 MR. VILLA: I mean --

21 THE COURT: You're not bound by it.

22 MR. VILLA: I'm sorry?

23 THE COURT: You're not bound by it.

24 MR. VILLA: I'm not sure if you're
25 cognizant of this. But I just wanted to bring to the

1 Court's attention Rule 104(d), which concerns
2 cross-examining a defendant in a criminal case. And
3 it says that, "By testifying on a preliminary
4 question, a defendant in a criminal case does not
5 become subject to cross-examination on other issues
6 in the case."

7 THE COURT: I think I've been trying very
8 hard to toe the line there.

9 MR. VILLA: I think you are. I just want
10 to bring it up because it's a little more than just
11 scope of direct kind of issues.

12 THE COURT: No. But -- by that I mean I'm
13 trying to protect him as much as possible. I know
14 you're offering him for a limited purpose. And I'm
15 trying to protect him. But since he's brought up his
16 medical, I'll let him answer the question. But
17 you're not necessarily bound by it if you decide it's
18 not in his interests to do so. But you can answer
19 the question.

20 A. No.

21 Q. This is Government's Exhibit 16, Bates
22 stamped 20531. So Mr. Perez, it's your testimony
23 that you lied when you said the shanks came from your
24 walker?

25 A. Yes.

1 Q. You also lied when you told Mr. Cordova
2 that he was the only person who knew that?

3 A. Again, I lied.

4 Q. You also lied when you said no one else
5 knows except two other people who were there; is that
6 correct?

7 A. Again, that was a lie.

8 Q. Who were you lying about when you mentioned
9 the two other people?

10 A. Like you were told yesterday and today,
11 there were rumors. And I know Billy. I know him
12 real good. I lied to him. I told him what I had to
13 tell him, to make sure it got out there. Because I
14 know he likes to run his mouth, and he'll repeat it.

15 Q. And actually, you told him, if he repeats
16 any of this, you're going to know, because you're the
17 only person he told that to, that was the truth?

18 A. No.

19 Q. Well --

20 A. That's a lie.

21 Q. Well, were you the only person who you told
22 this information to?

23 A. No.

24 Q. Okay. So you told this information to
25 other people?

1 MR. VILLA: Objection, outside the scope.

2 THE COURT: Well, I'll let him answer this
3 question, but probably not much more.

4 Q. I'm not going to ask you about the other
5 conversations. What I'm asking is, whether or not
6 you had told other people this? Because you told him
7 here that he is the only one who knows about it.

8 A. If you go back to the beginning of the
9 transcript, he starts off when we left off the last
10 conversation in X pod. There was two other people
11 involved in that conversation. So, again, go back to
12 Billy Cordova and ask him who was there when we had
13 that conversation.

14 Q. But I'm asking you, because you mention it
15 here, who were the two people?

16 MR. VILLA: Well, Your Honor, I object to
17 that. I think the Court said he could say yes or no
18 whether he spoke to two other people. Who the two
19 other people were is outside the scope of direct.

20 THE COURT: Well, let's don't ask him who
21 are the other two people. But I will let you get the
22 number.

23 Q. Your testimony, when you said "the feds
24 took those two people," was that the truth or a lie?

25 A. A lie.

1 Q. So the feds did not take those two people,
2 whoever they were?

3 A. Right.

4 Q. On DeLeon 20532, you also lied when you
5 said, "I can't put work in for the family, I've got
6 to be willing to do my part"?

7 A. Yes.

8 Q. Here's what I was referring to earlier,
9 DeLeon 20535. You told him, "I talked to you --
10 unintelligible -- I've been a hundred percent honest
11 with you, if somebody else came along and asked me
12 questions I wouldn't even answer one of them." Was
13 that the truth or a lie?

14 A. Again, sir, from X pod, we were all in that
15 same conversation.

16 Q. Was that the truth or was it a lie?

17 A. A lie.

18 Q. And so you lied when you told him you were
19 being one hundred percent honest with him?

20 A. Yes.

21 Q. Now, when you told Mr. Perez (sic) here on
22 DeLeon 20536, "I don't know nothing, brother. I see
23 nothing. I don't know nada," that was actually the
24 truth, wasn't it?

25 A. That, because I was in my room.

1 Q. Right. So you're saying that part was the
2 truth?

3 A. Yes, that was.

4 Q. "And that's how it's going to stay"?

5 A. I can't tell you something I saw that I
6 didn't see, man.

7 Q. Now, you say you were in your room. Your
8 room was in blue pod, was it not?

9 A. 115.

10 Q. The same pod where Javier Molina was
11 murdered?

12 A. Yes.

13 Q. Was that a yes?

14 A. Yes.

15 Q. And then, on page 20537, Mr. Cordova is
16 saying, "That's what they were saying because Jesse
17 gave the weed, the fucking paperwork to 'Spider',
18 'Spider' passed to Archie when he knew he was coming
19 down there to Cruces and then Archie gave to it
20 'Lazy.' And then he gave it to 'Dan Dan.'"

21 And your response was, "I already know all
22 that." Was that a lie? You didn't really know all
23 that?

24 A. Because of what Billy had told us in X pod.

25 Q. So you only knew it because Billy Cordova

1 told you?

2 A. Yes.

3 Q. And even though Billy Cordova was in the
4 pod next to you, he knew more about the Molina hit
5 than you did; is that fair to say?

6 MR. VILLA: Objection, outside the scope.

7 THE COURT: Well, I'll allow that.

8 Overruled.

9 Q. You could go ahead and answer, sir.

10 A. Yes.

11 Q. On Bates stamp 20540, you also lied when
12 you said, "'Crocodile' had to answer for it, 'BB' had
13 to answer for it."

14 A. Again, I was repeating what Billy had told
15 us.

16 Q. Okay. So why it was never done the first
17 the paperwork got down there, was a lie?

18 A. Again, you'd have to ask Billy Cordova.

19 Q. And even though you say in the next line
20 you heard "Pup" say they have to answer for that no
21 matter how close you are to them?

22 A. Again, Billy had told us that.

23 Q. So Billy told you that "Pup" said to you?

24 A. No, I never talked to "Pup." And as I just
25 said, sir, the records will reveal that. I hadn't

1 talked to Mr. Baca since March 15, 2010, when I
2 paroled from Cruces. I never seen him. I never
3 talked to him again till they brought him back from
4 Florence. So that was the last time I talked to him.

5 Q. So you had lied when you said you had a
6 conversation with "Pup" and "Pup" told you that "they
7 have to answer for it no matter how close you are to
8 them"?

9 A. Again, sir, I had not spoken to "Pup," so
10 it had to be a lie.

11 Q. Now, you said you heard a lot of rumors
12 about what happened with Molina; correct?

13 A. There was a whole bunch.

14 Q. And how was it that you picked these names
15 to lie about, as opposed to other names you heard out
16 there?

17 A. Like you said, sir, the records will
18 reveal, when DOC took me to the North, they put me in
19 X pod. And please go look. And you tell me where I
20 was at. And you can answer your own question.
21 That's how I knew, and I found out, is that, you know
22 what I mean?

23 Q. But that wasn't the question, sir. The
24 question was: How did you know to pick these names
25 versus other names that you heard?

1 A. Because those are the names that we were
2 told.

3 Q. You said you heard a bunch of rumors about
4 a bunch of names.

5 A. Yes.

6 Q. Okay. But for some reason, you decided to
7 pick these names.

8 A. After a while, you kind of figure out
9 what's BS, you know what I mean? And Billy had told
10 us a whole bunch of BS.

11 Q. Could you just have fed back to him the
12 same BS he gave you about the names?

13 A. If you go back to the beginning of the
14 recording, where he comes on and he says, "Do you
15 remember what you were telling me", because that was
16 a conversation we were all having in X pod, when he
17 said, they said, she said.

18 Q. So in other words, you were just repeating
19 back stories that Billy Cordova told you?

20 A. That's what I said. Now, knowing what I
21 know today, they were lies.

22 Q. How do you know they're lies?

23 A. I didn't give nobody nothing. I don't know
24 nothing came from my walker, because they don't have
25 my walker so we can test the material that they say

1 came from my walker, sir.

2 Q. We're talking about other lies here, as
3 well, sir. I mean, you said you lied that "Red" was
4 involved, and "Blue" was involved?

5 A. I don't know none of that.

6 Q. You know they pled guilty to it?

7 A. Now, because you gave us our tablets. I
8 only saw what I saw.

9 Q. You didn't know that he had pled guilty?

10 A. No, I did not.

11 Q. Or that Mr. Martinez had pled guilty?

12 MR. VILLA: Objection, Your Honor. This is
13 getting outside the scope, whether these guys pled
14 guilty.

15 THE COURT: Sustained.

16 Q. Now, once again, you lied about the
17 paperwork being there the year before; correct?

18 A. I wasn't there, so I don't know. Again,
19 I'm just going by what we were told.

20 Q. And you lied about one of the dudes being
21 less than a year to the house?

22 MR. VILLA: Object to the
23 mischaracterization. He hadn't said that he lied.
24 In some of these questions he lied and some of the
25 questions he's saying he's repeating what he's been

1 told.

2 THE COURT: Well, I'll let you work on that
3 on redirect. Overruled.

4 Q. Okay. I'll rephrase it, Mr. Perez. Was it
5 sure or not that "one dude was less than year to the
6 house"?

7 A. Who was that?

8 Q. I don't know.

9 A. I don't know who it was.

10 Q. How about "Red," "Red" was only two years
11 to the house. You know who "Red" is?

12 A. I knew he was less than four or five, yeah.

13 Q. So that was kind of true, what you told Mr.
14 Cordova?

15 A. That's -- four or five is a whole lot
16 different than one.

17 Q. Okay. So you're still lying?

18 A. I had to, wouldn't you say?

19 Q. And then "Blue" was just a couple of years
20 to the house. Was that true or was that false?

21 A. I don't know how much time he was doing or
22 what. I mean, I just met the guy.

23 Q. Was it true or was it a lie when you told
24 Mr. Cordova you gave him your pin number?

25 A. Check your records. I gave him the phone

1 call, because Wendy Perez had came through
2 complaining about his pin number. She says is
3 somebody using your pin at the South? He bitched and
4 complained and cried. I said, "Look, dog, who you
5 been calling?"

6 He says, "My mom."

7 Q. So that was the truth?

8 A. Yes.

9 Q. That's all I'm asking. Is it true or is it
10 false? It's true, right?

11 A. I did give him my pin.

12 Q. Now, here, you're talking about SNM
13 leadership here. And was it really the truth or a
14 lie when you said, "They let their addiction cloud
15 their mind to make the right calls"?

16 A. That was an opinion.

17 Q. Okay. Is it your opinion that they have
18 let their addictions cloud their minds?

19 MR. VILLA: Objection, outside the scope,
20 what his opinion is allegedly about SNM leadership.

21 THE COURT: I'll let you ask him if his
22 statements are true or false, but I think I'll
23 sustain that objection.

24 Q. Okay. You heard the Judge then.

25 THE COURT: You don't need to answer that.

1 Q. So the question is, is that statement true
2 or false, based on your opinion?

3 A. False now.

4 Q. It's false now?

5 A. Now, that I know everything.

6 Q. Okay. And your statement on DeLeon 20554,
7 "The other vatos should have already taken care of
8 them the year before"?

9 A. Again repeating what Cordova had told us.

10 Q. What did he tell you about who those vatos
11 were?

12 MR. VILLA: Objection, outside the scope.

13 THE COURT: Sustained.

14 Q. So let me ask you this, Mr. Perez: You
15 said for every single one of these conversations you
16 were under the influence of Suboxone; is that
17 correct?

18 A. Pretty much.

19 Q. How were you able to remember all the stuff
20 that Billy Cordova told you under the influence of
21 drugs?

22 A. You know, when your life is pretty much,
23 you know what I mean, when I was hearing rumors, I
24 had plenty of time to think about it, man. I was
25 scared. I couldn't fight. I couldn't even walk. So

1 I made sure.

2 Q. I'm not sure I understand. You made sure
3 what?

4 A. I lied to Billy to make, because like I
5 told you, Billy -- everybody, anybody that knows
6 Billy will tell you, he has a big mouth, he repeats
7 it. I figure: Tell him that, he'll go repeat it.

8 Q. But the question is how were you able to
9 remember all these details under the influence?
10 That's the question.

11 MR. VILLA: Objection, asked and answered.

12 THE COURT: Overruled. You need to answer
13 that question.

14 A. Pretty much from the whole conversation we
15 were having in X pod.

16 Q. So even though you were under the influence
17 of Suboxone, you remembered everything that's on
18 these pages?

19 A. Not everything.

20 Q. Well, you were able to -- well, you told
21 him these things?

22 A. Last night, when I went back to the jail,
23 the same papers you're looking at, I went through the
24 tablet, started looking and going through, because I
25 didn't remember half the shit that was said.

1 Q. I'm not asking --

2 A. I still don't remember most of it. I'm
3 only going by what I read on the tablet, and what you
4 read on the paper.

5 Q. I'm not asking about your recollection
6 today. I'm asking about your recollection when you
7 gave the statements to Mr. Cordova.

8 A. Go over the calls, and ask Billy Cordova
9 why he kept turning it on and off. There is a lot of
10 the conversation that he didn't record. And I wonder
11 why? Have you ever thought about that, man?

12 Q. Sir, I'm wondering why you're not answering
13 the question. That's what I'm wondering.

14 A. Call Mr. Cordova and ask him.

15 Q. Mr. Cordova is not here, sir.

16 A. Go get him another warrant, bring him back.

17 Q. The question is about your memory, sir?

18 A. Bring Billy Cordova back and ask him about
19 his memory and why he didn't record all the
20 conversations that was being had that day.

21 Q. What I'm hearing you say is that you are
22 referring to answer the question.

23 A. I don't know.

24 Q. If you're going to refuse to answer the
25 question, I'll just move on, so just tell me.

1 A. I don't remember.

2 Q. Was it the truth or a lie when you said,
3 "No matter what the fuck we do, do not let the
4 motherfucker out of the door, right or wrong"?

5 A. Again, that's opinion.

6 Q. Okay.

7 A. Because, if you remember, when it's done,
8 was done, a lot of he said, they said, she said. My
9 opinion.

10 Q. Your opinion was that they shouldn't have
11 let him out of the cell?

12 MR. VILLA: Objection to what his opinion
13 actually was. It's outside the scope.

14 THE COURT: Well, he's brought up his
15 opinion. He said this is his opinion. I think Mr.
16 Castellano has a right to figure out what his opinion
17 is. Overruled.

18 A. That's my opinion.

19 Q. But what I'm asking is your opinion is
20 about letting someone out of the cell for a hit?

21 A. Again, you'd have to hear the whole
22 conversation.

23 Q. Okay. Let's continue with the
24 conversation. Okay. "They didn't have the fucking
25 door. He's running down the steps, down the steps."

1 A. Again, I'm repeating what we were told.

2 Q. You were being told what?

3 A. Billy was telling us what had happened. I
4 didn't know what the hell had happened.

5 Q. So, in other words, he told you how the hit
6 went down on Molina?

7 A. I'm telling you, he knows more about it
8 than I did at the time.

9 Q. But we're talking about Molina here, right?

10 A. That was part of the conversation, what he
11 was telling us.

12 Q. Right. Including the fact that he came out
13 running, referring to Molina?

14 A. When Acee catches Eric Duran, you can ask
15 Eric Duran, because he's the one that told us that
16 part.

17 Q. It's your turn to testify today, Mr. Perez,
18 so I need to get this information from you.

19 A. I'm just letting you know, sir. When you
20 catch Eric Duran, you can ask him, because when he
21 was recording that conversation between the three of
22 us, Eric Duran was telling us this and that.

23 Q. And what you're talking about here, based
24 on what other people told you is, about the Molina --

25 A. What we were told.

1 Q. About the Molina murder?

2 A. Yes. I don't know what's true and what's
3 not. I was just repeating what we were told.

4 Q. Okay. And you don't know whether it's true
5 or not whether or not this "happened in front of the
6 camera, and everything"?

7 A. Again, just going by what they were saying.

8 Q. And they also told you then that someone
9 was yelling, "Get him, get him, get him"?

10 A. Yes.

11 Q. And they also told you that "Dan Dan" was
12 supposed to get rid of the fierros?

13 A. That was what Billy had said.

14 Q. And fierros are shanks?

15 A. Depending on who you ask.

16 Q. You gave a statement here, where you say --
17 this is DeLeon 20566 -- "How did Alex or 'Lazy' let
18 vatos stay in that pod knowing that 'Lazy' read the
19 discovery himself." Did someone else tell you that
20 "Lazy," or Mr. Herrera, had read the discovery?

21 A. That's what Billy was telling us. That's
22 why I say, what is a lie, true? Nobody knows. You'd
23 have to ask Billy Cordova.

24 Q. Is this the truth or a lie or something
25 that someone else told you, "Somebody knew the truth

1 about 'Creeper' beforehand, that's what they made him
2 do what he did, do you know what I mean"?

3 A. That came out of "Creeper"'s mouth.

4 Q. What came out of the "Creeper"'s mouth? I
5 didn't understand that. Someone knew the truth about
6 "Creeper"?

7 A. You'd have to ask "Creeper."

8 Q. Do you remember a conversation you had with
9 Mr. Cordova about Mr. Baca going to administration
10 about getting moved back?

11 A. I didn't know nothing about that until Eric
12 Duran and them were telling us about it.

13 Q. Okay. Well, was it a lie or was it the
14 truth when you said, "'Pup' should have known all
15 about that brother when he was there, but the dope
16 got the best of him over there too"?

17 A. Again, that's opinion.

18 Q. Was it a truth or a lie when you responded
19 to -- when you said, "Yeah," to Billy's question
20 about remembering what happened to "Pancho" and
21 "Looney" in Cruces, did you really remember that,
22 what happened to those guys? Or did you lie?

23 A. Which part?

24 Q. All right. "Yeah, but see, they're not
25 bringing him for that shit with 'Pancho' and

1 'Looney', remember that, remember that shit with
2 'Pancho' and 'Looney' in Cruces?"

3 And your response is, "Yeah"?

4 A. I did remember that. I remember the
5 situation. Don't know nothing about it. But I
6 remember something happened.

7 Q. So when Mr. Cordova says, "Dawg, you the
8 one that called that Billy. You see so they might be
9 getting him for that"?

10 A. Repeat that again.

11 Q. Right there he's talking about who called
12 the hit on Castillo and Garza. So right here you're
13 talking about the "Pancho" and "Looney" murders in
14 2001. And you say that you recall that?

15 A. Right before that he says, "Billy" -- "I
16 said old school, you know what I mean?" So I don't
17 know nothing about that. You'd have to ask, again,
18 Billy Cordova for that. I wasn't even in the system
19 back then.

20 Q. And then, when he asked you, Billy, "Called
21 that right? 'Looney' and 'Pancho' after that, they
22 shut us down."

23 And your response was, "Yeah"?

24 A. Again, that's when we got hurt. Is it the
25 truth or a lie? Who knows?

1 Q. On Bates stamp 20565, was this a truth or a
2 lie when you told Mr. Cordova, "I tell you dog, I'm
3 from the old school. I got schooled right, homes"?

4 A. My opinion.

5 Q. So in your opinion, you got schooled right?

6 A. My opinion.

7 MR. CASTELLANO: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. CASTELLANO: Pass the witness, Your
11 Honor.

12 THE COURT: Thank you, Mr. Castellano.

13 Any other defendants have cross-examination
14 or redirect of -- cross or redirect of Mr. Perez?

15 All right. Mr. Villa, if you wish to
16 conduct redirect of Mr. Perez, you may do so at this
17 time.

18 MR. VILLA: Thank you, Your Honor.

19 THE COURT: Mr. Villa.

20 REDIRECT EXAMINATION

21 BY MR. VILLA:

22 Q. Mr. Perez, during this time period when Mr.
23 Cordova was giving you Suboxone, were you taking any
24 other illegal drugs?

25 A. No.

1 Q. You were taking the medications that you
2 testified about on cross-examination. And those
3 medications came from the medical folks at the
4 prison?

5 A. Yes.

6 Q. You weren't taking any other -- well, let
7 me ask you this: You weren't taking any other form
8 of illegal drugs besides Suboxone?

9 A. No.

10 Q. And when you took the Suboxone that Billy
11 gave you, how did you ingest it?

12 A. Put it in a spoon, broke it down, swallowed
13 it.

14 Q. Is that how you did it every time?

15 A. Yes.

16 Q. I think Mr. Castellano asked if you
17 injected it. You did not inject it?

18 A. No.

19 Q. You remember the conversation with Mr.
20 Castellano about how you knew Billy would run his
21 mouth and he would talk a lot, and so that's why you
22 were talking to him. Why did you want Billy to talk
23 a lot about what the two of you were talking about?

24 A. To stop the rumors.

25 Q. Which rumors?

1 A. People were saying that I said this or
2 that.

3 Q. Why did you want the rumors stopped?

4 A. Because I don't want to get hurt.

5 MR. VILLA: Just a moment, Your Honor.

6 THE COURT: You may.

7 MR. VILLA: No further questions.

8 THE COURT: All right. Thank you,
9 Mr. Villa.

10 All right. Mr. Perez, you step down.
11 Thank you for your testimony.

12 All right. Mr. Villa, does Mr. Perez have
13 further witnesses or evidence he wishes to present?

14 MR. VILLA: We do, Your Honor.

15 MS. FOX-YOUNG: Your Honor, Mr. Perez calls
16 Dr. Edward French.

17 THE COURT: Dr. French, if you'll come up
18 and stand next to the witness box on my right, your
19 left. Before you're seated, my courtroom deputy, Ms.
20 Standridge, will swear you in.

21

22

23

24

25

1 EDWARD FRENCH,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. State your
6 name, and spell it for the record.

7 THE WITNESS: Edward French, F-R-E-N-C-H.

8 THE COURT: Dr. French. Ms. Fox-Young.

9 BY MS. FOX-YOUNG:

10 Q. Good afternoon, Dr. French.

11 A. Good afternoon.

12 Q. Can you tell the Court what your profession
13 is?

14 A. I'm a professor of pharmacology at the
15 University of Arizona College of Medicine.

16 Q. How long have you been doing that?

17 A. At the University of Arizona since 1988.

18 Q. And did you work in that field before 1988?

19 A. Yes.

20 Q. Where?

21 A. I got my doctorate degree in pharmacology
22 from UCLA in 1976. And then, from there, I did three
23 years of what we call post-doctoral research at the
24 Salk Institute, which was a behavioral pharmacology
25 lab. And from there, went to the Max Planck

1 Institute of Psychiatry in Munich, Germany, for an
2 additional year of research. And then to the
3 University of Maryland, at Baltimore School of
4 Medicine, from '80 to '88.

5 Q. You're aware that you've been proffered as
6 an expert to testify in this case?

7 A. Yes, I have.

8 Q. And the areas are for expertise in
9 pharmacology?

10 A. Yes.

11 Q. Do you have any particular background or
12 experience in toxicology?

13 A. We, in pharmacology, think of everything as
14 "a dose." So everything can become a toxic substance
15 if there is enough of it around.

16 Q. Okay. And also in neuroscience?

17 A. Yes.

18 Q. Tell me about that.

19 A. Well, my interest is in drugs, and how they
20 affect brain and behavior. So I'd have to know about
21 the connections of the brain and the way that
22 chemicals get moved so that we can process
23 information and evaluate the world we live in.

24 Q. Thank you, Dr. French.

25 MS. FOX-YOUNG: Your Honor, I'm not going

1 to go through a complete detail of Dr. French's
2 background and experience, unless the Government
3 wants to challenge him for purposes of this hearing,
4 which I know with our previous expert the Government
5 didn't have an issue.

6 THE COURT: Do you have any problem with
7 Dr. French offering opinion testimony?

8 MS. ARMIJO: Do you have his CV as an
9 exhibit?

10 MS. FOX-YOUNG: Your Honor, we have
11 tendered that as Document 1052-1. It's in the
12 record. We filed an expert disclosure back in the
13 spring, and then we supplemented. So it's all
14 been -- the Government has been provided with all
15 that.

16 MS. ARMIJO: I was just saying for purposes
17 of the hearing today. But I'm not questioning his
18 credentials. I just wanted to see if they had one
19 here today.

20 THE COURT: All right. So you don't have
21 any problem with him offering opinion testimony?

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: Anybody else? All right. So
24 the Court will allow Dr. French to offer opinion
25 testimony. What is the specific area?

1 MS. FOX-YOUNG: Dr. French -- we'd like
2 Dr. French to offer opinion testimony in the areas of
3 pharmacology, toxicology, and neuroscience for
4 purposes of this hearing.

5 THE COURT: All right. Without any
6 objection, then, the Court will allow opinion
7 testimony in those areas.

8 BY MS. FOX-YOUNG:

9 Q. Dr. French, did you review any materials
10 prior to coming to testify at this hearing?

11 A. Yes, I did. Several hundred pages that you
12 sent to me, which were physician directions or -- I
13 forgot the correct term -- physician notes -- and
14 medication records.

15 Q. Okay. Are they the medication
16 administration records for Rudy Perez?

17 A. Yes, they are.

18 Q. And do you know if they cover the time
19 period -- if they included the time period of
20 February 2016?

21 A. Yes, 2016, back many years.

22 Q. Okay. And are you aware of a substance
23 that -- I think you've been here part of the day and
24 heard some of the testimony.

25 A. Yes.

1 Q. Are you aware -- do you have any
2 familiarity with the substance called Suboxone?

3 A. Yes, I do.

4 Q. That's been described today?

5 A. Yes.

6 Q. Tell me what the composition of Suboxone
7 is.

8 A. Suboxone is a combination medication. It
9 has an active ingredient, a very, very potent active
10 ingredient called buprenorphine, and also it contains
11 a substance called naloxone. And if we've been
12 listening to the news, we know that naloxone is also
13 the name to Narcan, which is a opiate antagonist.

14 Q. And is Suboxone a drug that is approved by
15 the FDA?

16 A. Yes, it was approved in, I believe 2002, to
17 be used to help maintenance of opiate dependence.

18 Q. And you've heard testimony -- and maybe you
19 know otherwise -- that it is used by individuals to
20 get high, is it not?

21 A. Sure. It's an opiate.

22 Q. Okay. Can you tell me -- can you compare
23 it to any other opiates? Is it similar to any other
24 opiates you've studied?

25 A. It's very different in many ways. Similar

1 in some ways, but different in many other ways. If
2 you'll bear with me, I'll try to explain the
3 pharmacology of it a little bit. So when we think of
4 opiates, they act on receptors in our brain, and also
5 other parts of our body, but in our brain they act on
6 a particular receptor. And we have substances like
7 morphine, heroin, methadone, which we call full
8 agonists. In other words, they occupy that receptor
9 to do what it's going to be doing.

10 Now, buprenorphine is a little bit
11 different. It acts on that same receptor, but it
12 doesn't have the same bang for the buck. It does
13 certain things well. It can treat pain. People can
14 get high with it. But there is a certain dose
15 limitation; in other words, if you keep pushing the
16 dose, keep taking more of it, you don't get any
17 bigger effect, which is not the same case with
18 morphine or heroin or methadone.

19 Q. Other than the dosage difference, can you
20 compare it in any way to morphine for me?

21 A. Well, yes. So morphine, we would call
22 morphine a full opiate agonist. We would call
23 buprenorphine a partial opiate agonist. So it has a
24 ceiling effect -- morphine doesn't have a ceiling
25 effect on the system, but buprenorphine does.

1 Q. Would you classify Suboxone as being in the
2 family of morphine-like drugs, or is it in a
3 different family of drugs? How could you
4 characterize it?

5 A. It's an opioid. So it's certainly in that
6 family. But it's not a drug, I think, that we would
7 see being abused quite a bit because of that ceiling
8 effect. In other words, people abuse these
9 substances because they can take more of it and get
10 higher and higher. But buprenorphine, which is in
11 Suboxone, the more you take, you won't get much
12 higher.

13 Q. Okay. So you reach a point, you get high
14 and then it stops?

15 A. Right.

16 Q. And can you compare it to morphine in terms
17 of its strength?

18 A. Yes. So, when it comes to analgesia, in
19 other words, to relieve pain, it is about 25 -- or
20 when it comes to the action of the opiate receptor,
21 it's about 25 times more potent, binding to that
22 opiate receptor.

23 Q. Okay. So is it fair to say it's a potent
24 drug, has a ceiling effect, but it is a potent drug
25 that can get you pretty high?

1 A. It can get you high, yeah. And let me -- I
2 want to explain something, so -- because it's
3 confusing when you talk about partial agonist and
4 full agonist. So we all have heard about Narcan, how
5 Narcan can be used to reverse a heroin overdose. So
6 Narcan has a lot of affinity for the opiate receptor,
7 but it doesn't produce any opiate effects.

8 So buprenorphine is between what we think
9 of like naloxone and morphine.

10 Q. Okay. So is it -- tell me what that has to
11 do with its strength relative to morphine for the
12 person ingesting it.

13 A. It will produce analgesia like morphine,
14 but there is, again, that limitation to how much
15 analgesia you can get with it.

16 Q. Okay. And I think you heard testimony a
17 little bit earlier about, and you looked at the
18 records that Mr. Perez, in February 2016, was
19 prescribed Tramadol. Do you recall that?

20 A. Yes.

21 Q. And also prescribed gabapentin?

22 A. Yes.

23 Q. Do you have an opinion as to whether or not
24 taking tramadol or taking gabapentin would affect the
25 efficacy of Suboxone, in terms of getting you high.

1 Is my question clear?

2 A. Yes.

3 So let me start with the gabapentin,
4 because gabapentin has no affinity for opiate
5 receptors. So we can just put gabapentin aside.
6 It's used for pain, but it doesn't have an opiate
7 action.

8 Q. So it would not interfere with getting high
9 and using Suboxone?

10 A. Correct.

11 Q. Okay.

12 A. Now, tramadol is a synthetic opiate, which
13 is used for pain relief. It's not as potent, for
14 example, as morphine. And so, if tramadol were on
15 board, let's say, and you were to take Suboxone which
16 has buprenorphine in it, that buprenorphine just
17 overtakes the tramadol.

18 Q. Okay. And so, in layman's terms, if I took
19 tramadol, and I also took Suboxone, I would still get
20 high from the Suboxone? It would sort of override?

21 A. Yes.

22 Q. Or you said overtake?

23 A. Yes.

24 Q. You talked about the analgesic effects of
25 Suboxone?

1 A. Yes.

2 Q. And you talked about, in layman's terms,
3 Suboxone can get a person high?

4 A. Yes.

5 Q. Is there a technical term for that? Under
6 the influence?

7 A. Well, there is a word for a high. A high
8 can be what we call euphoric. So euphoria would be a
9 pleasurable sensation, which is what people think of
10 when they think of a high.

11 Q. And also it can reduce pain?

12 A. Yes, it can.

13 Q. Does Suboxone have any other effects on a
14 user?

15 A. Well, it will bind the opiate receptors.
16 But for some reason, there are certain parts of the
17 brain that don't respond as well to Suboxone as they
18 do to morphine.

19 And the great thing about Suboxone, in a
20 sense, is that ceiling effect. It's really -- it's
21 pretty hard to kill yourself with Suboxone in a
22 sense, because the breathing, the respiratory
23 inhibitions that morphine produces, which takes our
24 breath away; that's what kills people, is that
25 morphine stops us from breathing. There is a ceiling

1 effect with Suboxone so you don't get that big
2 depression of breathing.

3 Q. So your breathing wouldn't slow as much in
4 taking Suboxone?

5 A. Yes. Probably not by dose, yes.

6 Q. And what I'm trying to get at as well, are
7 there any other effects or side effects of taking
8 Suboxone for a user, that you know of, or have
9 encountered?

10 A. Oh, sure. There are side effects that are
11 in some ways similar to other opiate side effects.
12 Some people will get sleepy. Some people complain of
13 dizziness. And of course, if you start to depress
14 the central nervous system, which is what these drugs
15 are, they're depressants, you get a diminution in a
16 person's ability to make proper judgments or to think
17 things through.

18 Q. So it can affect cognition.

19 A. Yes.

20 Q. Can it cause sedation?

21 A. Yes.

22 Q. And confusion?

23 A. Yes.

24 Q. Can it cause a change in the level of
25 consciousness?

1 A. That's a little bit tricky, because I think
2 of these drugs, if they're causing a person to be
3 high, and they're causing it because they're
4 inhibiting our brain, then I would think that it is
5 changing our level of consciousness. That's how I
6 would look at it. In other words, you're just not in
7 the game, you're not one hundred percent when you're
8 high.

9 Q. So Suboxone can cause alterations in
10 judgment?

11 A. Yes.

12 Q. Changes in level of consciousness?

13 A. Yes.

14 Q. Sedation? Confusion?

15 A. Yes.

16 Q. I think you said weakness?

17 A. I didn't say weakness.

18 Q. Can it cause weakness?

19 A. I would think it could cause some weakness,
20 sure, I would think so.

21 Q. Are there any other effects that you know
22 of?

23 A. Well, it can maybe cause itching, because
24 opiates cause people to itch. Maybe reduce blood
25 pressure, because opiates have a central nervous

1 system depressant effect, so maybe blood pressure
2 could go down. There are probably, you know, a
3 laundry list of side effects that have been reported.

4 MS. FOX-YOUNG: Thank you, Your Honor.
5 I'll pass the witness.

6 THE COURT: Thank you, Ms. Fox-Young.
7 Any other defendants want to cross-examine
8 Dr. French?

9 All right. Ms. Armijo, do you wish to
10 cross-examine Dr. French?

11 MS. ARMIJO: Thank you, Your Honor.

12 EXAMINATION

13 BY MS. ARMIJO:

14 Q. So, Dr. French, you're a Wild Cat?

15 A. Yes, more or less.

16 Q. I am, too.

17 A. But they're not doing very well.

18 Q. That's okay. It's early in the season.

19 All right. Now, in looking at your notice,
20 not the one defense has provided for you. Sorry. It
21 indicates that you are going to talk about drugs and
22 everything. And it says your opinion is based on the
23 review of the defendant's medical records, including
24 medication administration records, as well as
25 information provided by his health care providers,

1 other witnesses to Mr. Perez' state at the relevant
2 time periods, and information provided by Mr. Perez'
3 defense team. Is that all correct?

4 A. I believe so. There was a third thing in
5 there, I wasn't really sure. Say the third thing
6 again.

7 Q. Okay. Well, I guess you came and you gave
8 an expert opinion --

9 A. Right.

10 Q. -- on Suboxone and other things?

11 A. Right.

12 Q. And I believe you were asked by defense
13 counsel, and you said that you looked at his medical
14 records?

15 A. Correct. Those are the physician
16 instructions that were provided.

17 Q. Okay. But you're basing your opinion on a
18 lot more, based upon this notice; correct?

19 A. Well, I'm basing my opinion that I know
20 that these drugs were used, and I know what these
21 drugs do. So I guess that's what I'm basing my
22 opinion on.

23 Q. Okay. Were you provided with information
24 from his health care providers?

25 A. What was in the physician records that were

1 given to me.

2 Q. And did you bring those with you today?

3 A. They're in my briefcase, yes.

4 Q. Would you mind allowing the prosecution
5 team to look at that?

6 A. No.

7 MS. FOX-YOUNG: Your Honor, these have all
8 been disclosed to the Government.

9 And I'll just note that this notice is for
10 trial as well as for this hearing. And so I think
11 the Government knows that it's broader, and the
12 opinions are broader than subject --

13 THE COURT: Well, if he's got the materials
14 with him, he can show them to them. But --

15 Q. Are you also basing your opinion today --
16 and we also talked about the records -- on: It says
17 other witnesses to Mr. Perez' state at relevant time
18 periods. Are you basing anything that you testified
19 today based upon other witnesses to Mr. Perez' state
20 at relevant time periods?

21 A. No. I don't have any documentation about
22 what other witnesses said.

23 Q. Okay. And it also says, "and information
24 provided by Mr. Perez' defense team."

25 A. Yes. I have -- there is a couple of blurbs

1 from the defense attorneys about kind of the
2 timeframe when things were happening.

3 Q. Okay. And did you use that for your
4 opinion?

5 A. No, I didn't use it for my opinion. I
6 just -- I'm going to try to explain this in a simple
7 way.

8 So I was given a timeframe, and I was asked
9 to look at the medication records. And so, when I
10 looked at the medication records, I tied it in to the
11 events that was in the timeframe. In other words,
12 there was an event in 2014, I believe in March of
13 2014, and then there was the event in 2016. So I
14 looked at the medication records that kind of like
15 book-ended those dates.

16 Q. And you talked a lot about Suboxone use;
17 correct?

18 A. Yes.

19 Q. Does anything in those medical records --
20 and did you get the medical records? I'm sorry.

21 MR. VILLA: Yes, I have them.

22 MS. ARMIJO: Could he have them?

23 MR. VILLA: Could I let Dr. French look
24 through his own stuff?

25 A. What do I do?

1 MS. ARMIJO: I was going to have -- for the
2 speed of things, I was going to have my co-counsel
3 look those over for me. And I believe Mr. Beck is
4 going to be looking those over for me.

5 Q. Now, you talked a lot about Suboxone;
6 correct?

7 A. Yes.

8 Q. Do any of those medical records have any
9 indication that Mr. Perez took Suboxone?

10 A. No.

11 Q. So what are you basing your opinion on, as
12 far as -- well, strike that. Is it your opinion that
13 Mr. Perez took Suboxone?

14 A. It is my opinion.

15 Q. Okay. What are you basing that on?

16 A. Oh, I'm basing it first on the interactions
17 that I had with the defense attorneys that they had
18 brought this up, that Suboxone was involved. And
19 then I sat in the courtroom today and I heard a lot
20 about it.

21 Q. Okay. Well, let's get -- if you're basing
22 your opinion that he was on Suboxone by what the
23 defense attorneys told you, what did they tell you?

24 A. That Suboxone was involved.

25 Q. Okay. Other than what the defense team has

1 told you -- and I'm assuming what you're talking
2 about with Mr. Perez' testimony -- do you have any
3 other independent proof that Suboxone was -- that Mr.
4 Perez took Suboxone?

5 A. No.

6 Q. Okay. So you're just basing it off his
7 testimony and what the defense has provided you?

8 A. Yes.

9 Q. And is what the defense provided to you
10 about his use in those documents?

11 A. No.

12 Q. Okay. So what did the defense tell you?

13 A. That Suboxone was involved on the events of
14 around -- was it February 2016?

15 Q. Okay. In the event, hypothetically
16 speaking, Suboxone was not ingested by Mr. Perez,
17 would you agree with me that all of your testimony
18 about Suboxone use and its impact on a person would
19 not apply to him?

20 A. I don't follow that, because I just heard
21 that it was involved.

22 Q. Okay. Well, that's his testimony. Were
23 you here yesterday?

24 A. No.

25 Q. Okay. Well, yesterday, let's just assume

1 there was a witness that testified that he did not
2 give him Suboxone.

3 A. Okay.

4 Q. So it was somebody that was on the stand,
5 under oath, just like Mr. Perez, but testified to the
6 complete opposite.

7 A. Okay.

8 Q. Okay. So I understand that you are basing
9 your opinion based upon what Mr. Perez said. But I'm
10 asking you, hypothetically speaking: If the other
11 witness was correct, and Mr. Perez was not on
12 Suboxone, your testimony as to the impact on
13 Mr. Perez of taking Suboxone would be irrelevant?

14 A. Correct.

15 Q. Now, did you have an opportunity to -- were
16 you provided with the actual recordings of the
17 telephone calls where the defense is alleging he was
18 on Suboxone?

19 A. No.

20 Q. Wouldn't that be important for you, based
21 on your expert testimony of whether or not a person
22 is on Suboxone and given all of the different things
23 that you were talking about that they could be under
24 all the impact, to actually listen to the calls?

25 A. It would be helpful.

1 Q. It would have been helpful, right?

2 A. Yes.

3 Q. And maybe, if you listened to them, you
4 could have heard somebody who was speaking
5 rationally, whose words were not slurring?

6 A. Oh, wait a minute now. Can I hold you off
7 for just a second?

8 Q. Sure.

9 A. So, you made a giant leap there.

10 Q. Okay.

11 A. Your leap is that, because there is no
12 slurred speech and there is another -- no other
13 behaviors which would indicate a person is on an
14 opiate, that they're not on an opiate, and that's
15 false, that's completely false.

16 Q. Okay. Now, why did you say then that it
17 would have been helpful for you to listen to the
18 calls?

19 A. Well, it would have been helpful, if there
20 had been certain indications like slurred speech, or
21 the person is falling asleep and banging their head
22 on the table, or they can't walk or something, that
23 can be useful.

24 Q. Okay.

25 A. But just the fact that those aren't there

1 doesn't mean that they're not under the influence.

2 Q. Okay. But it would have been helpful, and
3 your opinion would have been more complete, because you
4 could have come in and testified that that person did
5 or did not have those symptoms, while on this call?
6 I'm just talking about the symptoms now.

7 A. Right. If they didn't have the symptoms,
8 that's fine, it doesn't necessarily mean they're not
9 under the influence.

10 Q. Well, I understand. But you were talking
11 about them not having those symptoms; correct?

12 A. Correct.

13 Q. So now, you weren't provided with the
14 calls. Were you provided with the transcripts?

15 A. No.

16 Q. Okay. Would that have been helpful for you
17 to at least read them to see if there were any
18 issues? Again, not to determine whether or not the
19 person was under the influence, but to see whether or
20 not they had any of those symptoms that you might be
21 able to even just read, like slurred speech; if a
22 person was incoherent in a conversation?

23 A. Well, again, if those things were in the
24 transcripts, then they would substantiate one part,
25 which is maybe there is an overdose of a central

1 nervous system depressant, causing those problems.

2 If it's not in the transcript, it doesn't mean that
3 it didn't exist.

4 Q. Well, but if it's not in the transcript, it
5 means that they weren't having the symptoms of that;
6 correct?

7 A. Having the symptoms doesn't necessarily
8 mean that they're not under the influence.

9 Q. Okay. Well, we're going to talk about that
10 in a minute. But would it have been helpful for you
11 to have the recordings and transcript in order for
12 you to make -- have an opinion based upon something
13 that you're actually testifying about?

14 A. I could probably answer that question by
15 saying: It could maybe have been helpful, but I'm
16 not sure it would have been necessary.

17 Q. All right. So you don't know if he had
18 slurred speech, was falling asleep, incoherent, or
19 anything on those recordings?

20 A. I don't know that.

21 Q. Okay. Now, did you have a written opinion
22 for the defense?

23 A. No.

24 Q. Now, is a person able to -- under the
25 influence, is a person able to rationally think?

1 A. To a degree, sure.

2 Q. Okay. And are they able to remember
3 things?

4 A. To a degree, yes.

5 Q. And if -- are they able to -- and I guess
6 you're saying to a degree. So why don't you explain
7 that. Is there -- strike that.

8 Is there a continuum of under the influence
9 for, if someone is under Suboxone?

10 A. Oh, now you're asking about Suboxone?

11 Q. Yes.

12 A. Again, it's because it's a unique drug, the
13 continuum is not like the same you'd see with
14 morphine or heroin. But there is a dose effect.
15 There is always a dose effect with drugs. So there
16 is a continuum, it's just not as big a continuum.

17 Q. Okay. Did you hear any testimony that Mr.
18 Perez was under heroin or morphine?

19 A. No, I didn't hear anything like that.

20 Q. Okay. So then let's stick with Suboxone.

21 A. Okay.

22 Q. You said it's a smaller continuum; correct?

23 A. Correct.

24 Q. So on that smaller continuum, what would
25 you expect a person under the influence of Suboxone

1 to have symptoms of?

2 A. Well, again, it depends on the dose.

3 Q. Okay.

4 A. So they could be feeling good, be high.

5 They could have what we call euphoria, a pleasant
6 sensation.

7 Q. Okay. And under that one -- and I'll stop
8 there.

9 A. Okay.

10 Q. Under the good and feeling high and feeling
11 the euphoria, is that such a state that they cannot
12 remember things or think rationally?

13 A. Oh, no, not at all.

14 Q. They can still remember things and think
15 rationally?

16 A. Yes, sure.

17 Q. Make decisions?

18 A. They can. Doesn't mean the decisions are
19 correct, but they can.

20 Q. Not have their will overborne, so to speak?

21 A. I guess if they're a strong enough person,
22 probably not, but it depends on the person's own
23 personality, how influenced they can be.

24 Q. Okay.

25 A. So a drug may reduce that level, and make

1 them even more under the influence than someone else.

2 Q. Okay. Now, let's go to the -- to something
3 further down on the continuum.

4 A. Okay.

5 Q. What would be the signs that you would see
6 if somebody were not just in that happy, feel good
7 state?

8 A. They could be dizzy. They could be maybe a
9 little sleepy. I think that those would probably
10 be -- maybe a little bit confused.

11 Q. Okay. And you would expect if somebody is
12 in that state that that might be obvious from maybe
13 their conversation, if someone is confused or dizzy,
14 possibly sleepy?

15 A. I don't think from a conversation I would
16 jump to that conclusion. I think that -- I think
17 that when people are confused, that they're not
18 responding to, let's say, particular questions or
19 particular source, people seeking information from
20 them, they may seem confused. Like when was the last
21 time you had dinner with your dog? Well, you know, I
22 don't know. I can't remember.

23 Q. Okay.

24 A. So that confusion could be a drug induced
25 confusion. What dog? I don't even have a dog.

1 Q. Okay. Good example. If you had listened
2 to the recordings of Mr. Perez, wouldn't you be in a
3 better place to know if he had any of that confusion,
4 like you were just talking about with the dogs?

5 A. I don't know. Because to me, it's a
6 conversation between -- I don't know between who it
7 is -- but it's a conversation between two people.
8 And I'm not sure that I would be in a position to
9 determine based upon what they're talking about, if
10 one of them is confused.

11 Now, if one of them was, I guess, asking
12 specific questions about specific events or specific
13 times or whatever, and the other person is not able
14 to really answer, then I might be able to say, Well,
15 it sounds a little confused.

16 Q. Okay. But since you didn't review that,
17 you can't tell us?

18 A. Right. I can't tell you.

19 Q. You can't tell us. And other than Mr.
20 Perez' testimony, you don't have any indication that
21 he was under the influence of Suboxone at all?

22 A. Correct.

23 MS. ARMIJO: If I may have a moment?

24 THE COURT: You may.

25 Q. A quarter of a strip of Suboxone, are you

1 familiar with what that amount is?

2 A. I don't know the milligrams that would be
3 in the quarter of a strip. But a full strip is what
4 people will put under their tongue.

5 Q. And that would be for the medical dosage of
6 it?

7 A. Yes.

8 Q. So a quarter strip, would that be a smaller
9 amount, obviously, than a full strip?

10 A. Yes.

11 Q. And so then it would be a quarter dosage of
12 what a normal dosage of Suboxone is; correct?

13 A. Yeah, it would be one quarter of what would
14 be in that strip, correct.

15 Q. And does a person's size or weight factor
16 into that?

17 A. No.

18 Q. So a person could weigh 350 pounds or 100
19 pounds and the impact would be the same?

20 A. Pretty much, yes. Weight doesn't really
21 enter into drug effects very often because -- just
22 because a person is 300 pounds, doesn't mean that
23 they have three times as much blood in their system
24 as a person who is 100 pounds.

25 Q. Okay. What about someone who is an addict?

1 Does that impact it?

2 A. Impact the --

3 Q. Impact the effect of the drug?

4 A. Oh, if they're an addict, if they're an
5 ongoing addict?

6 Q. Yes.

7 A. Then that's a really, really good one,
8 because --

9 Q. Okay. Tell us about that?

10 A. That's why buprenorphine or Suboxone is
11 used, is because, if you are an ongoing addict --
12 let's say you're just using heroin all the time, and
13 you decide to take Suboxone, you don't get high from
14 Suboxone. You go through withdrawal. So it actually
15 causes withdrawal. So that's why it's used for
16 opiate maintenance programs.

17 Q. Okay. So if you're a heroin addict and you
18 use Suboxone, it doesn't impact you; correct?

19 A. It does. It makes you go through
20 withdrawal.

21 Q. Okay. So it doesn't get you high?

22 A. Oh, no, not at all.

23 Q. It's used to make you withdraw from it;
24 correct?

25 A. Well, it was --

1 Q. From heroin?

2 A. It was used incorrectly, so it would make a
3 person withdraw.

4 Q. Okay.

5 A. A person wouldn't voluntarily give
6 themselves Suboxone or naloxone if they were loaded
7 up on heroin.

8 Q. And if a person is not an addict --

9 A. Right.

10 Q. -- what is the impact of it?

11 A. Then it acts like an opiate.

12 Q. Okay. If someone uses Suboxone on a
13 regular basis, so it's a continuous use of Suboxone,
14 does that euphoria, feel good state that you were
15 describing earlier, is that diminished?

16 A. When you say "continuous," can you define
17 what you mean by continuous?

18 Q. Well, if they use it daily?

19 A. No. It would -- it's -- Suboxone contains
20 the other ingredient I mentioned, naloxone, which is
21 an antagonist also. So you can get a little bit high
22 from the buprenorphine, and you get some of the
23 opiate effects. But if you're using it over and over
24 again, then you don't necessarily become what I'd
25 call tolerant, because the naloxone is preventing the

1 opiate from acting. I know this sounds very
2 confusing. But Suboxone is a really fascinating but
3 confusing drug.

4 Q. All right. But, again, it would still be
5 on that smaller continuum, correct, that you were
6 talking about, as opposed to morphine and other
7 drugs?

8 A. Yes. And I think it's because the morphine
9 and the other drugs do not have that other ingredient
10 in them, naloxone.

11 MS. ARMIJO: All right. Thank you. No
12 further questions.

13 THE COURT: All right. Thank you, Ms.
14 Armijo.

15 Anyone else have any question of
16 Dr. French? All right. Ms. Fox-Young, if you have
17 redirect of Dr. French.

18 MS. FOX-YOUNG: Thank you, Your Honor.

19 THE COURT: Ms. Fox-Young.

20 REDIRECT EXAMINATION

21 BY MS. FOX-YOUNG:

22 Q. Dr. French, did Mr. Villa or I ask you to
23 tender any opinion in this case as to whether Mr.
24 Perez was high?

25 A. No, you did not.

1 Q. And did we ask you to tender an opinion as
2 to how high he was?

3 A. No.

4 Q. Or whether he was confused?

5 A. No.

6 Q. At the end of your cross-examination, there
7 was a discussion of addiction and how addiction might
8 affect a high that you get from Suboxone; is that
9 right?

10 A. Correct.

11 Q. Now, addiction is sort of a general term.
12 Is it the recency of use of drugs -- I mean, say
13 you're an addict, and you haven't used for six weeks.
14 Does the fact of your addiction affect the efficacy
15 of the Suboxone in getting you high?

16 A. That's a very, very good question. So
17 addiction doesn't really fit in really well with what
18 you're asking. But I'll try to explain where I'm
19 coming from. So addiction is a loss of control.
20 People finally get to a point where the drug has
21 highjacked their brain and their behavior, and they
22 lose control over the use of that drug.

23 Now, what happens with repeated use of a
24 drug is that you have to take more, and you become
25 tolerant, so you take even more, and then you become

1 dependent upon that drug. So that, if you don't have
2 the drug, you need to take more to get back, so you
3 don't go through withdrawal.

4 Now, the thing about -- I guess where I'm
5 going here is that people who are addicted and have
6 lost control, and who are using enormous amounts of
7 drugs like heroin or methadone, or any of the other
8 full opiate drugs, they stop taking it -- we see this
9 all the time in the current opioid crisis, people who
10 are on OxyContin or oxycodone for pain, and they take
11 it, and they like it. And they take more of it, and
12 they like it even more. And then they can't get it
13 anymore. And some of them will go off of the drug
14 and become abstinent so they don't take the drug
15 anymore. But then their addiction says: I like that
16 drug, I think you should take that drug, and they go
17 back to taking what they took the last time, which is
18 what kills them. Because now the drug that they had
19 been taking for, you know, for many, many weeks or
20 months, they're taking too much of it, so they become
21 abstinent. So the body re-equilibrates, it goes back
22 to a condition, which is like the first time they
23 took it. I don't know if that answers your question
24 at all. But if you are off the drug for a while, and
25 then you take an opiate, you'll get high from it.

1 Q. Okay. That does answer my question. And
2 more specifically, I know you testified -- you
3 weren't here to hear the testimony in the proceedings
4 yesterday, but I'll represent to you that one of the
5 Government's witnesses, Mr. Billy Cordova, testified
6 that if an individual has not had Suboxone or
7 opiates -- I believe you said opiates -- for 36
8 hours, then you take Suboxone, the Suboxone will work
9 to get that person high. Is that consistent with
10 your understanding? Is that true based upon what you
11 know of the drug?

12 A. Yes.

13 MS. FOX-YOUNG: Okay. No further
14 questions, Your Honor.

15 THE COURT: All right. Thank you, Ms.
16 Fox-Young.

17 All right. Dr. French, you may step down.
18 Thank you for your testimony.

19 THE WITNESS: Thank you. Do I get those
20 records back?

21 THE COURT: What happened to Dr. French's
22 records?

23 MR. BECK: He may have them back.

24 THE COURT: All right. Does Mr. Perez have
25 his next witness or evidence?

1 MR. VILLA: Well, Your Honor, we're in a
2 bit of a conundrum. We do, and we think that our
3 next witness may take about the same time as
4 Dr. French. However, the last witness that's here
5 for both Mr. Herrera and Mr. Perez is Shannon
6 McReynolds, and I think his availability -- so
7 neither one of these experts is available next week.
8 Our expert is going to be much more available in
9 January than Mr. McReynolds is, because he has to
10 leave the country. So I think what we're going to
11 try to do is put McReynolds on and finish him. And
12 then we're going to have to find another time to
13 resume the suppression hearing that sounds like won't
14 be next week.

15 THE COURT: Any objection to taking
16 Dr. McReynolds right now?

17 MR. BECK: No, Your Honor. That's fine.

18 THE COURT: And I have gotten a little
19 information from Ms. Wild. She's, I guess getting
20 back into pocket. And this is what she's saying.
21 She says, "I thought we could do a half day on
22 Wednesday." And they said that she knew -- she said
23 that Michelle, my courtroom deputy that's replacing
24 Ms. Wild, knew that she needed Wednesday. She said
25 she'll work it all out. Initially set Monday and

1 Tuesday, and then picked up the 20th, the week before
2 last. So before anybody runs and makes flight or
3 scheduling connections, you better check with her.
4 Because I guess she's thinking we've got Wednesday
5 morning. So I just say that because people were
6 asking if we were doing it Wednesday. And I was
7 giving you what information I had based on my
8 schedule. But Ms. Wild, I think, is trying to pick
9 up Wednesday morning.

10 All right. So is it Dr. McReynolds?

11 MR. VILLA: Your Honor, just a couple of
12 things. We had a couple of NMCD folks under
13 subpoena. Given the time, Ms. Armijo has asked if we
14 can release them. We can. That is Ms. Wendy Perez
15 and Mr. Roland Mares. They can be released. And, of
16 course, we'll have to find a date in January to
17 resume this hearing, because as I said, our expert
18 won't be available next week. I just want to make
19 sure that that's clear, so whatever is done next
20 week, it won't be the continuation of this hearing.

21 THE COURT: Okay. I'm reluctant to do all
22 this wheeling and dealing on scheduling without
23 Ms. Wild. But is the Government okay with that?

24 MR. BECK: I mean, it sounds like that's
25 the plan. It sounds like there is really not much we

1 can do with that. We have already -- we've already
2 booked the two witnesses for, I think, Mr. Garcia's
3 Daubert hearing, from FBI headquarters. They're
4 coming down here next week Monday and Tuesday, so I
5 think that is set in stone. If we can't do this
6 Wednesday, we can't do much anyway, so --

7 THE COURT: What are the hearings next
8 week?

9 MR. BECK: I believe next week Ms. Wild has
10 scheduled, or at least the parties anticipate -- and
11 I think everyone agrees on this -- the parties
12 anticipate next Monday and Tuesday is the Daubert
13 hearings for Mr. Garcia that he asked for, for the
14 two FBI scientists from Quantico to come down.
15 They've already booked their flights. So they will
16 be here next week.

17 MS. HARBOUR-VALDEZ: Your Honor, as well as
18 the pretrial hearing that was noticed up for the
19 18th.

20 THE COURT: Oh, we are going to do the
21 pretrial in December?

22 MS. HARBOUR-VALDEZ: That was what was
23 noticed.

24 MR. VILLA: Sounds like we could fill the
25 time, and resume Mr. Perez' hearing later. I just

1 didn't want to mess anybody up. I think that was the
2 plan anyway, was to try to be done, so we can stay on
3 task for next week.

4 MS. SIRIGNANO: Your Honor, if I could just
5 have a quick second. I understand the Government's
6 witnesses are going to be here Monday and Tuesday.
7 But I don't believe it's going to take both days all
8 day. Mr. Adams is going to handle the firearms
9 expert, which could be an hour or so, and the DNA
10 expert, depending on how long the Government takes to
11 put on their evidence. And our expert isn't going to
12 be here. It's just going to be cross-examination of
13 their expert.

14 THE COURT: Well, so it sounds like we may
15 have some trouble filling up the days, so I'm not
16 going to commit to anything. Right at the moment,
17 we'll go ahead and get McReynolds on the stand and
18 get his testimony. But I really can't commit to
19 anything until we get Ms. Wild back in pocket.

20 MR. VILLA: And, Your Honor, I'm not trying
21 to get us to commit to what we're doing next week
22 other than that we'd like the opportunity to complete
23 the presentation of our evidence, and aren't able to
24 do that next week.

25 THE COURT: I understand the situation.

1 But I'm not committing to it. We'll take McReynolds,
2 and we'll figure out what to do over the next two
3 days before we get back together next Monday.

4 All right. Do you want to swear in -- is
5 it Dr. McReynolds?

6 THE WITNESS: No. It is Shannon
7 McReynolds.

8 SHANNON McREYNOLDS,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 DIRECT EXAMINATION

12 THE CLERK: Please be seated. State and
13 spell your name for the record.

14 THE WITNESS: My name is Shannon
15 McReynolds, S-H-A-N-N-O-N, M-C-R-E-Y-N-O-L-D-S.

16 THE COURT: All right. Mr. McReynolds.
17 Ms. Bhalla.

18 MS. BHALLA: Thank you, Your Honor.

19 BY MS. BHALLA:

20 Q. Mr. McReynolds, how are you currently
21 employed?

22 A. I have a third party contract as a senior
23 corrections advisor with the U.S. State Department in
24 their Bureau of International Narcotics and Law
25 Enforcement Activities.

1 Q. And what do you do in that job?

2 A. My job is to provide assistance to the
3 State Department on projects involving prisons in
4 other countries.

5 Q. And how were you employed prior to this
6 job?

7 A. Prior to this job, my career was
8 approximately 25 years with the New Mexico
9 Corrections Department.

10 Q. And what positions did you hold while you
11 were in the Corrections Department?

12 A. I started in 1990 as a corrections officer.
13 In 1992, I became a classification officer; did that
14 for eight years. In approximately 2000, I became a
15 programs manager; did that for a year; went on to be
16 a unit manager with the South facility at the
17 Penitentiary. I then transferred over to Central
18 office. Over there, I did appeals of placement Level
19 6. I also did interstate compact. After that, I was
20 a contract monitor, where I monitored privately
21 operated facilities that the Department had a
22 contract with. After that, I became the PREA
23 Coordinator for the Department. And two years from
24 retirement, I was appointed as the Inspector General
25 for the Department.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. And what did you do as the Inspector
2 General?

3 A. As the Inspector General, I had three
4 primary duties. First, was to monitor the privately
5 operated facilities to determine whether or not they
6 were complying with the terms of the contract, and to
7 assess liquidated damages.

8 The second thing that I did was I also
9 continued our efforts to implement PREA in the New
10 Mexico Corrections Department.

11 And thirdly, I reviewed inmate appeals of
12 placement in Level 6, and briefed the Director of
13 Adult Prisons on what the response should be.

14 Q. Thank you. Did you provide me with a copy
15 of your curriculum vitae for this case?

16 A. I did.

17 MS. BHALLA: Okay. Your Honor, I'd like to
18 go ahead and move that into evidence as Carlos
19 Herrera Exhibit I.

20 MR. BECK: No objection, Your Honor.

21 THE COURT: All right. Let's see, Carlos
22 Herrera's Exhibit I will be admitted.

23 MS. BHALLA: Your Honor, I'm going to move
24 to admit Mr. McReynolds as an expert for purposes of
25 this hearing, only in terms of classification

1 procedures and policies. I'm trying to do this in an
2 abbreviated fashion, so we can get through with this,
3 because I don't know if the Government has any
4 objection.

5 THE COURT: Mr. Beck, do you have any
6 objection to Mr. McReynolds offering opinion
7 testimony in those areas?

8 MR. BECK: I mean, I guess is he offering
9 opinion testimony as to classification for New
10 Mexico, or generally, or is he offering fact
11 testimony to what happened with the defendants in
12 this case?

13 MS. BHALLA: Fact testimony to what
14 happened with the defendants in this case and opinion
15 testimony as to whether or not the justifications for
16 the classifications given in Interim Level 6 were
17 valid, or if they complied with the relevant policies
18 and procedures.

19 MR. BECK: I mean, it seems to me that
20 that's just fact testimony, if he's saying they
21 didn't comply with procedures factually. That's not
22 an opinion.

23 MS. BHALLA: I'm happy to proceed, and if
24 there is a problem, we can address it as we go along.

25 MR. BECK: That's fine.

1 THE COURT: Well, I don't know what that
2 means.

3 MS. BHALLA: If the Government has an
4 objection, Your Honor, to any of the testimony that
5 we're going to elicit from him, I can go back and lay
6 a foundation for that testimony, if the Government
7 has an objection.

8 THE COURT: Are you willing to proceed that
9 way?

10 MR. BECK: That's fine.

11 THE COURT: Okay. All right. We're
12 kicking the can down the road, huh? All right.

13 MS. BHALLA: I'm just trying to be
14 expedient, Your Honor.

15 THE COURT: I guess I wonder, though, if he
16 doesn't have personal knowledge of everything, he's
17 not going to be a fact witness. But it seems to me
18 he's about to tell me whether the New Mexico
19 Corrections Department did something right or wrong
20 based upon just his review of the materials. And I
21 guess that's an odd expert. I'm not even sure it's
22 an expert. It's like -- I mean, I can't say I
23 haven't seen somebody being used this way by a party,
24 but it's more just a summary witness, rather than
25 really an expert witness.

1 But if the Government is willing to allow
2 him to testify, subject to further objection, I
3 shouldn't stand in the way.

4 BY MS. BHALLA:

5 Q. Mr. McReynolds, have you done a review of
6 any of the classification or housing records in this
7 case?

8 A. Yes, I have.

9 Q. And have you reviewed some of Carlos
10 Herrera's records in this case?

11 A. Yes, I have.

12 Q. And have you reviewed some of Mr. Perez'
13 records in this case?

14 A. Yes.

15 Q. Okay. Can you tell us what you determined
16 about -- let me go back, I'm sorry -- you've been
17 present for the full two days of hearings that we've
18 had in this matter?

19 A. Yes.

20 Q. Okay. And have you been able to listen to
21 some of the testimony that's been elicited in these
22 two hearings?

23 A. Yes.

24 Q. And has some of that information helped you
25 with your testimony today?

1 A. Yes.

2 Q. Okay. And that would be in addition to
3 reviewing those records?

4 A. That is correct.

5 Q. Okay. Have you been able to make any kind
6 of determination about where Mr. Herrera was housed
7 in 2014?

8 A. It started off at the Southern New Mexico
9 Correctional Facility, and then he was transferred up
10 to the Penitentiary South facility.

11 Q. And to the best of your recollection, when
12 was Mr. Herrera housed in Southern?

13 A. From 2014, after the Munoz (sic) homicide,
14 and then he was transferred up to the Penitentiary.

15 MR. BECK: Your Honor, I'm going to object
16 to hearsay at this point. And I think this is
17 probably what the Court was getting at. I'm guessing
18 he's relaying what is asserted on placement histories
19 and documents he's seen. It would be him testifying
20 to hearsay.

21 THE COURT: Well, in this hearing, I guess,
22 it's not hearsay I'm troubled with. I mean, you've
23 got to hear hearsay to sometimes determine whether
24 other evidence is admissible. So that's not my
25 problem. And I probably am not going to keep him

1 from testifying either as a fact witness or as an
2 expert because he's relying on hearsay.

3 My problem is he seems to me not to be an
4 expert. He's simply going to -- he may offer an
5 opinion, but he's not an expert in New Mexico
6 classifications and whether they were done properly.
7 Maybe I'm sort of thinking I don't need an expert. I
8 need two lawyers standing there arguing and telling
9 me what the problem is, not an expert telling me.

10 So I guess, maybe it's more not -- it's not
11 helpful here.

12 MR. BECK: I think you're getting ahead of
13 me, Your Honor. What I was going to say is that, if
14 he's going to be testifying to hearsay documents, I
15 think we might as well admit those hearsay documents,
16 and then we can compare them, with two lawyers
17 arguing from one place or another, whether those
18 documents, and what's documented on them, complies
19 with the policy that we've already had testimony was
20 in effect at the time. So I'm agreeing with Your
21 Honor, that I don't see that there is helpful or
22 useful information coming from this witness.

23 MS. BHALLA: May I, Your Honor?

24 THE COURT: You may.

25 MS. BHALLA: Your Honor, we heard from Mr.

1 Roark about placement, about housing histories, about
2 classification. Mr. Roark testified about those
3 placements and transfers and classifications based on
4 documents, many of which were supplied by the
5 Government. I don't understand why Mr. McReynolds
6 can't testify regarding those same documents, which
7 I'll go through with him.

8 THE COURT: But Mr. Roark works at the
9 Corrections Department, is a fact witness.

10 MS. BHALLA: That's correct.
11 Mr. McReynolds worked at the Department of
12 Corrections for over 25 years --

13 THE COURT: But not --

14 MS. BHALLA: -- as general inspector.

15 THE COURT: Not in New Mexico.

16 MS. BHALLA: Yes, in New Mexico, Your
17 Honor.

18 THE COURT: It still seems like an odd
19 thing.

20 MR. BECK: Your Honor, it seems to me that,
21 if they wanted to ask -- and they may have and I may
22 just have missed it -- whether the documents in Mr.
23 Herrera's and Mr. Perez' file complied with what was
24 on -- what was in the policies, we could have done
25 that with Mr. Roark, and why he was placed there, or

1 through other witnesses who may have placed him
2 there. And I think we just let Ms. Perez go, Wendy
3 Perez go, who actually may have had a hand as a fact
4 witness in placing Mr. Herrera or Mr. Perez, or both,
5 in a certain facility at the PNM North. And so --

6 THE COURT: Let's do this: Let's see what
7 your exhibits are. If you have some exhibits to
8 admit, let's go ahead and get those admitted. Let's
9 show those to the Government, and then let's see what
10 then we're going to do with the witness here.

11 MS. BHALLA: Your Honor, I think what we're
12 going to do is go through some of the exhibits that
13 Mr. Roark testified about.

14 THE COURT: Well, let's do it my way.

15 MS. BHALLA: Okay.

16 THE COURT: Hand your exhibits to the
17 Government. Let's see what we're going to do with
18 them. I'm not sure I'm going to let you do it with
19 Mr. McReynolds.

20 All right. Let's take an afternoon break.
21 Maybe you can talk a little bit and come to an
22 agreement about what, if anything, we're going hear
23 from Mr. McReynolds, and I'll make a ruling on it
24 when we get back.

25 (The Court stood in recess.)

1 THE COURT: All right. Let's all take our
2 seats. Everybody look around and make sure that all
3 the defendants have an attorney. Everybody looks
4 like they've got somebody.

5 All right. Mr. Beck, Ms. Bhalla, did y'all
6 work out some procedure here?

7 MR. BECK: We didn't, Your Honor.

8 THE COURT: Did not.

9 Well, here's what I would propose: That I
10 not accept him for opinion testimony. If you want to
11 treat him like an agent; sometimes the prosecution
12 puts an agent on, they walk through documents and
13 show me the documents, they can show me the
14 documents. And you can kind of do a dog and pony
15 show, get your documents in. I don't think there is
16 any objection to the documents. Is there, Mr. Beck?

17 MR. BECK: No, Your Honor.

18 THE COURT: But he not offer opinion
19 testimony. And you can make your point, you can go
20 ahead and argue your point. But I'll not accept him
21 for opinion testimony.

22 MS. BHALLA: Okay, Your Honor. I
23 appreciate the Court's --

24 THE COURT: What do you think about that,
25 Mr. Beck? I can tell by Ms. Bhalla, that's not her

1 favorite thing.

2 MR. BECK: That's fine, Your Honor.

3 THE COURT: All right.

4 MS. BHALLA: Your Honor, I would like to
5 make a record that he is a 702 expert based on his
6 training and experience in classifications in the New
7 Mexico Department of Corrections for over 25 years;
8 that he can offer his opinion on the facts and
9 circumstances that have been presented in this case.
10 He's not a fact witness. He is a classic 702 expert.
11 Based on his training and his experience in
12 corrections. And he is qualified to give an opinion
13 about whether or not the policies and procedures in
14 NMDOC were followed.

15 THE COURT: All right. Well, I told you
16 how I'm going to rule. He can't offer opinion
17 testimony. But if you want to use him to get your
18 documents in and you want to make your point.

19 Seems to me, this is just what lawyers do.
20 They take the policies, they get them, and they argue
21 that they weren't followed. I guess I'm not thinking
22 that his testimony is useful. I need two lawyers
23 telling me why they violated the policy. And then,
24 if they violated the policy, what in the world that
25 has to do with the suppression motions. But I think

1 that's as far as I'm going to go.

2 MS. BHALLA: Let me ask you a question,
3 Your Honor: Is your hesitation on this issue in
4 regards to relevance, or is it in regards to his
5 expertise?

6 THE COURT: Well, if we had a jury over
7 here, I wouldn't let you put on experts that weren't
8 helpful to the jury. I don't see it any different
9 here. This is sort of just arguing from the facts.
10 So get your facts in. He doesn't really offer any
11 facts because he doesn't have any personal knowledge
12 here. And so you haven't offered him for personal
13 knowledge. So all you're doing is letting him say
14 something you can say just as well, that I can
15 determine just as well. And then, we've got to make
16 an enormous leap as to how that's relevant to whether
17 what Mr. Herrera and what Mr. Perez said is
18 involuntary. I think there is a fairly large gap
19 there.

20 MS. BHALLA: If you would let me address
21 the question of relevance, I think it might be
22 helpful.

23 THE COURT: You can address it. Your time
24 is slipping away.

25 MS. BHALLA: I understand. But I think I

1 need to do that for the record, Your Honor.

2 THE COURT: Go ahead.

3 MS. BHALLA: Thank you, Your Honor.

4 In terms of relevance, and why this is
5 important, one of the things that we've been hearing
6 about and one of the things that is at issue in this
7 case --

8 THE COURT: I think this is more
9 appropriate for argument time. But if you want to go
10 ahead and argue it now, go ahead.

11 MS. BHALLA: Well, it makes it difficult
12 for me, Your Honor, because if we want to get him to
13 provide expert opinions on what happened here --

14 THE COURT: He's not going to be allowed to
15 offer expert opinions. I've ruled.

16 MS. BHALLA: Okay. So then do I need to --
17 let me just keep it very brief, Your Honor. I'm
18 sorry, but I feel that I have to do this. If what --
19 if Mr. McReynolds provides testimony about whether or
20 not these policies or procedures were followed, it's
21 relevant, because the Government has argued --

22 THE COURT: He cannot provide that
23 testimony.

24 MS. BHALLA: I understand. But what I'm
25 trying to articulate is the relevance.

1 THE COURT: Like I said, I think that's
2 more appropriate for argument. But if you want to
3 use your time right now to argue, you can go ahead.

4 MS. BHALLA: Can I have just one moment,
5 Your Honor?

6 THE COURT: You may.

7 BY MS. BHALLA:

8 Q. Mr. McReynolds, I'm going to go ahead and
9 show you some documents that have already been
10 admitted into evidence. The first will be Carlos
11 Herrera's Exhibit D. I'm going to put it on the
12 screen here. Can you take a look at that document,
13 please?

14 A. Yes.

15 Q. And is that an interim level disciplinary
16 placement regarding Mr. Herrera?

17 A. It's a placement of Carlos Herrera into
18 Interim Level 6, involuntary segregation.

19 Q. And what is Interim Level 6?

20 A. Interim Level 6 is a status where a
21 referring facility places an inmate on lockdown for
22 five days. They send the justification to Central
23 office. Central office then makes a determination as
24 to whether or not they will accept his placement into
25 Level 6, and send him up to the penitentiary, the

1 North facility.

2 Q. And how often is the review supposed to
3 happen on Level 6 placement?

4 A. For the first eight weeks it's supposed to
5 happen every week. Thereafter, once every 30 days.

6 Q. And have you reviewed other inmate
7 disciplinary placement records regarding Mr. Herrera?

8 A. Yes, I have.

9 Q. Do you have any understanding as to how
10 long he was placed in Interim Level 6?

11 A. From the time of his initial placement,
12 March 11, 2014, up until now.

13 Q. Okay. And what is life like for someone
14 who is in Interim Level 6?

15 A. In Interim Level 6 they are in a cell, a
16 single bunk cell. It has access to natural light and
17 ventilation. But all -- there is no congregate.
18 They rec for one hour for five days a week. They are
19 restricted to a shower three days a week. They do
20 not have -- they have all their meals taken inside
21 their cell. They may have a television. At the time
22 this policy was in effect, they were allowed to have
23 a television. One of the things that the department
24 was wanting to make sure is that there weren't any
25 sensory deprivation situations there.

1 Q. And what are the policy requirements for
2 placing someone in Interim Level 6?

3 A. There is a number of reasons.

4 MR. BECK: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Mr. McReynolds, are you aware of a policy
7 concerning placement in Level 6?

8 A. Yes.

9 Q. Do you know what the terms of that policy
10 are?

11 A. Yes.

12 Q. Can you tell us what the terms of the
13 policy are?

14 MR. BECK: Objection, Your Honor.

15 THE COURT: Sustained.

16 MS. BHALLA: I'm sorry, Your Honor?

17 THE COURT: Sustained. I guess I'm just
18 not seeing. The defendants have fought very hard the
19 gang experts. It looks to me like this is a similar
20 sort of person.

21 MS. BHALLA: I'm sorry, Your Honor.

22 THE COURT: It seems like to me it's a
23 similar sort of person. You're wanting to keep the
24 Department's gang experts out. And this looks like
25 the same sort of thing to me.

1 MS. BHALLA: He's not being -- Your Honor,
2 the testimony that we're trying to elicit today is
3 about classifications.

4 THE COURT: I understand that. But it's
5 the same sort of witness. You're bringing somebody
6 in from the Department. They're trying to bring
7 somebody in to testify about the SNM Gang. You're
8 trying to bring somebody in to talk about this
9 classification. It seems to me it's a very similar
10 sort of expert. And I think I'm being fairly
11 consistent in just saying these aren't the kind of
12 experts that are appropriate.

13 MS. BHALLA: Well, Your Honor, I think that
14 Mr. Roark provided testimony about the policy, about
15 whether or not the policy was followed, about whether
16 or not -- what the situations regarding the policy
17 were. I think, if we're looking at consistency, that
18 Mr. McReynolds should be allowed to testify regarding
19 the same things.

20 Also, Your Honor, the Government has never
21 filed an objection to Mr. McReynolds being qualified
22 as an expert despite our expert notices being filed a
23 while ago.

24 THE COURT: Well, if I understood it, the
25 Government didn't understand what he was going to

1 testify about until today. There was no written
2 report. And the question was whether he was going to
3 come in and talk about classifications in general,
4 which is the impression I had, that he was going to
5 talk about classifications in a general way, and this
6 isn't where you put people, and things like that; not
7 specifically talking about what had occurred
8 factually in this case.

9 If you can show me your notice, I'd be glad
10 to look at it and be corrected on that. But I think
11 that was the reason -- the Government didn't know
12 exactly what he was going to testify about.

13 MS. BHALLA: Well, Your Honor, I believe in
14 our original notice, we did indicate that he was
15 going to testify --

16 THE COURT: If you have the notice --

17 MS. BHALLA: I can get it. I didn't print
18 it off and bring it with me, Your Honor, because I
19 didn't anticipate this being an issue.

20 I also filed a supplemental notice, as
21 requested by the Court, I believe on Monday. And so
22 that has been filed as well.

23 But if you could give me a second, I can go
24 get a copy of that, or at least pull it up from
25 Pacer.

1 THE COURT: All right. But you're using
2 your time here to do those things. It's up to you
3 how you want to use the next 15 minutes.

4 MS. BHALLA: I understand that, Your Honor.
5 But I don't really see that I have a choice at this
6 point, because if I'm not allowed to elicit testimony
7 from our witness about the policies and procedures
8 and about the classifications, I'm not sure how we're
9 going to proceed. So, if the Court wants a copy of
10 the original notice to -- so that we can show you
11 he's going to testify about classification procedures
12 and policies, and how inmates were housed, I think
13 that the Government has been put on sufficient notice
14 to that issue.

15 THE COURT: All right. I'm not sure it's
16 going to change any of my rulings, but --

17 MS. BHALLA: If it's not going to change
18 any of the Court's rulings, we can proceed. But part
19 of what Mr. Roark testified today was to the policies
20 and procedures that were in place regarding the
21 movement of these inmates. And so I would like to be
22 able to ask him about those policies and procedures.

23 BY MS. BHALLA:

24 Q. Mr. McReynolds, are you aware of general
25 policies and procedures regarding placement inmates

1 in Level 6?

2 A. Yes.

3 Q. I'm going to ask you to review what's been
4 marked as Government's Exhibit 47. Can you tell us
5 what that document is?

6 MR. BECK: Objection --

7 A. That is a step --

8 MR. BECK: Objection, Your Honor. I think
9 we're getting into what a New Mexico Corrections
10 Department document is.

11 THE COURT: I'm just not sure this witness
12 provides any testimony that the Court is going to
13 hear. So, Mr. McReynolds, you may step down. Thank
14 you for your testimony.

15 All right. Where do we go as far as
16 witnesses on the motion?

17 MR. BECK: I think Ms. Fox-Young may have a
18 witness.

19 THE COURT: Ms. Fox-Young, do you want to
20 bring your witness, Ms. Fox-Young?

21 MS. FOX-YOUNG: Thank you, Your Honor. Mr.
22 Perez calls Dr. Heather Brislen.

23 THE COURT: Dr. Brislen, if you'll stand
24 next to the witness box before you're seated, Ms.
25 Standridge will swear you in.

1 HEATHER BRISLEN,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. State your
6 name and spell it for the record.

7 THE WITNESS: Thank you. My name is
8 Heather, H-E-A-T-H-E-R; Brislen, B-R-I-S-L-E-N.

9 THE COURT: Ms. Brislen, is it doctor,
10 or --

11 THE WITNESS: Yeah.

12 THE COURT: Dr. Brislen. Ms. Fox-Young.

13 BY MS. FOX-YOUNG:

14 Q. Good afternoon, Dr. Brislen. What is your
15 profession?

16 A. I'm an internal medicine physician.

17 Q. And where do you practice?

18 A. I practice in a couple of capacities in
19 Albuquerque, New Mexico. I have my own private
20 primary care practice. And I'm also a clinical
21 faculty member at the University and the VA, where I
22 teach internal medicine residents.

23 Q. How long have you been doing that?

24 A. Since about 2011.

25 Q. So for the past six-plus years?

1 A. Right.

2 Q. And where did you complete your training?

3 A. At the University of New Mexico.

4 Q. And that was medical school?

5 A. Right. I did medical school at UNM,
6 between 2003 and 2007; residency then from 2007,
7 2011. I also -- my first job after that was at the
8 VA, and I did clinical informatics training, along
9 with my initial junior faculty position there, while
10 I did primary care.

11 MS. FOX-YOUNG: Your Honor, just a moment,
12 please.

13 THE COURT: Certainly.

14 MS. FOX-YOUNG: Thank you, Your Honor.

15 Q. Are you aware, Dr. Brislen, that you have
16 been tendered as an expert in this case to give
17 opinions on internal medicine?

18 A. That's my understanding, yes.

19 MS. FOX-YOUNG: And Your Honor, I'll again
20 ask the Government if the Government objects to Dr.
21 Brislen giving any opinions as to this hearing? If I
22 need to lay a better foundation and go through her
23 background, I can. She was noticed up properly. And
24 I think the Court found that we didn't need to file a
25 supplemental notice for her. She was -- the expert

1 that the Court did not order us to supplement on
2 Monday. So I don't have a document number, but her
3 CV has been provided.

4 THE COURT: Hold on just a second. Let's
5 see what Mr. Beck --

6 MR. BECK: We'll stipulate to her expertise
7 for this hearing.

8 THE COURT: All right. And you don't have
9 any objection to her offering opinion testimony on
10 internal medicine?

11 MR. BECK: Not for this hearing, Your
12 Honor.

13 THE COURT: All right. Anybody else have
14 an objection?

15 All right. Dr. Brislen can offer opinion
16 testimony on internal medicine.

17 MR. BECK: May we request which document
18 number she's noticed as an expert in?

19 MS. FOX-YOUNG: Your Honor, it's Document
20 1050, filed April 5.

21 MR. BECK: Thank you.

22 MS. FOX-YOUNG: And we also noticed her
23 within that broader category of internal medicine, to
24 testify as to her opinions on outpatient care and
25 clinical informatics, specifically care for medically

1 complex patients. I don't know if the Government
2 will stipulate --

3 MR. BECK: We'll stipulate.

4 THE COURT: No objection to her testifying
5 on opinion testimony in those areas?

6 MR. BECK: No objection.

7 THE COURT: Anyone else?

8 All right. She may offer opinion testimony
9 in those areas.

10 BY MS. FOX-YOUNG:

11 Q. Dr. Brislen, did you review records
12 pertaining to Rudy Perez in the course of your
13 preparation for work as an expert in this case?

14 A. Yes. I've reviewed extensive medical
15 records, both in print and digitally provided,
16 spanning -- 1992 was the earliest, though the bulk of
17 the comprehensive set is 2000 to the present.

18 Q. So from 1992, to the present you looked
19 at --

20 A. That's right.

21 Q. And do some of those records detail Mr.
22 Perez' physical health?

23 A. Yes.

24 Q. And do some of them detail his mental
25 health?

1 A. Yes.

2 Q. And do they address physical trauma that he
3 sustained?

4 A. Yes.

5 Q. And his mobility?

6 A. Yeah.

7 Q. Can you tell me, can you tell the Court
8 what physical diagnoses he has? And I understand
9 it's a long period of time.

10 A. Sure.

11 Q. I'd like specifically to know if you can,
12 relying on your work and the records, what physical
13 diagnoses he had in February of 2016?

14 A. Sure. I think what makes that complicated
15 is that he's had a really remarkable history in both
16 physical, violent trauma, accidental trauma, and
17 surgical trauma. So he has compounded issues that
18 sort of have occurred in layers, affecting his
19 ability to be mobile and physically healthy.

20 If you were categorizing where he is right
21 now, I would say the primary issues are he's had a
22 number of traumas and surgeries to his abdomen and
23 thorax, which have resulted in really profound
24 alteration of normal musculature. So his posture is
25 off, his ability to carry himself without falling is

1 off. And the structural health of his abdomen is
2 permanently altered.

3 Internally, he had a dramatic small bowel
4 obstruction with perforation in 2012, that required
5 further surgeries, revealing that all of these
6 different injuries that he's had over time have
7 developed into a lot of scar tissue. That makes him
8 vulnerable not only to digestive issues now, but also
9 permanently at very high risk for re-obstruction.
10 Devastating sort of intestinal complications --

11 Q. Okay. And not to interrupt you, but you
12 heard Mr. Perez testify earlier about a surgery, and
13 that he had been sick and been out. That was for the
14 intestinal blockage you're describing?

15 A. That's right.

16 Q. You also looked at records that pertained
17 to Mr. Perez' IQ and his mental debility?

18 A. That's right. Just to comment real quick,
19 there has been sort of almost too many to count
20 musculoskeletal injuries to his extremities, which
21 affect his ability to walk, and permanent sort of
22 disability there as well.

23 For his mental health, he's under pretty
24 continuous psychological care. And the notes
25 comprehensively add up pretty clearly to some --

1 MR. BECK: Objection, Your Honor. I'm not
2 sure she can offer opinion testimony about mental
3 health conditions. I understood she's an internal
4 medicine doctor and will offer opinions about
5 outpatient care and clinical care. I think the
6 medical records may speak for themselves, when they
7 talk about a mental conditions. But I was under the
8 understanding she was an expert in medical
9 conditions.

10 THE COURT: Well, why don't you lay a
11 foundation. See what background she has for mental.

12 Q. As part of your training, your medical
13 training, have you studied psychiatric care?

14 A. I would say I'm not a psychiatrist, but
15 garden variety psychiatric issues are within the
16 scope of what I do. And that would include
17 depression, anxiety, PTSD, a variety of supportive
18 care under shared care with a psychiatrist for
19 anything more complex than that.

20 Q. So you also have experience treating
21 patients for those types of issues?

22 A. That's right.

23 Q. In addition to your medical trainings?

24 A. Right.

25 THE COURT: Well, I think that so many

1 internists do some mental health.

2 MR. BECK: I think that's sufficient, Your
3 Honor.

4 THE COURT: You know, she's not trying to
5 overdo what an internist, I think, does these days.
6 So I'll continue to allow her to testify. If you
7 think it's getting into psychiatry, then you can
8 reraise the issue.

9 Ms. Fox-Young.

10 MS. FOX-YOUNG: Thank you, Your Honor.

11 BY MS. FOX-YOUNG:

12 Q. And so, Dr. Brislen, along those lines, I
13 think you were starting to say you have reviewed
14 records that pertain to Mr. Perez' mental condition,
15 and also to any medications that he was taking for
16 mental health?

17 A. That's right. So he's had mood disorders
18 pretty much throughout the time of the records that I
19 covered, and has been taken from antipsychotics, like
20 Haldol, to -- at the time that we're talking about,
21 he was taking Nortriptyline, which I understood to
22 be -- it's a tricyclic antidepressant, which you can
23 use both for depressive symptoms, mood stabilization,
24 also pain control.

25 Q. And have you looked at any records that

1 pertain to his IQ?

2 A. Yes. Actually, that's almost always
3 included in his intake visit at every facility that
4 he's been at, that he's known to have a low IQ,
5 innate since childhood, as well as mood disorders
6 kinds of things.

7 Q. And that's seen throughout the records?

8 A. Right.

9 Q. Do you know if he has any neurological
10 conditions?

11 A. Yes. He has seizure disorder, which I
12 think is a major part of his overall health picture.
13 His seizure disorder was known to have existed
14 already in 1992.

15 Subsequent to that, he had a number of
16 traumatic brain injuries from -- one was a violent
17 episode, and then a number of car accidents. A
18 couple of those were noted to significantly worsen
19 his seizure disorder. And then he's got
20 throughout -- this is sort of another theme in his
21 health records, is that changing his antiseizure
22 medications in order to get better control; he's done
23 a number of laboratory studies that show that his
24 therapeutic levels of those medications is not high
25 enough to give him adequate control.

1 And then a really sort of profound thing
2 that happened during those hospitalizations, when he
3 was acutely sick, and in and out of the sort of
4 incarceration medical facility and University
5 Hospital, he was diagnosed with status epilepticus,
6 which is a life-threatening emergency seizure. He
7 had a single seizure that lasted eight days.

8 Q. Can you give us the time period for the
9 status epilepticus diagnosis?

10 A. Yes. That, I believe, was in May of 2013.

11 Q. And he had a seizure that lasted how long?

12 A. Eight days.

13 Q. And after that time, his medication was
14 changed?

15 A. His medication was changed. And what was
16 interesting about that seizure was it was revealed
17 that he not only has classic tonic-clonic
18 shaking-type seizures, but he also has these
19 subclinical seizures, which is, you know, to an
20 outsider, looks sort of like spacing out, not
21 participating in conversation, maybe a period of
22 lapsed cognition. But it's not classically
23 identifiable as a seizure. But because it's a
24 generalized seizure, the person having the seizure
25 may also not be aware that they are having or have

1 had a seizure.

2 So that particular episode medically was
3 very interesting, and a number of different
4 neurologists saw him at UNM. And he was discharged
5 on a new medication that he hadn't taken before
6 called lacosamide at that time. He's no longer on
7 that medication now.

8 Q. Okay. Jumping forward from that time to
9 January and February 2016, you reviewed the records
10 that indicate what medications Mr. Perez was
11 prescribed?

12 A. That's right.

13 Q. Can you tell the Court what medications he
14 was prescribed during that period?

15 A. I can. And if you'll -- things were kind
16 of in flux, so let me tell you a little bit of a
17 story there, too. When he first transitioned to that
18 facility, PNM, he was taking gabapentin, initially,
19 which was used, in his case, for neuropathic pain.
20 So he's got a number of pain issues, I would imagine,
21 due to his musculoskeletal disorders and trauma. So
22 he was switched from a medication called gabapentin,
23 to a medication called Trileptal. Trileptal is an
24 anti-seizure medication, but in his case at that
25 time, it was being used to control his pain.

1 There are a number of recorded notes
2 between P.A. Martinez, who we met yesterday, and
3 Rudy, that his pain was not well controlled at that
4 time. And on January 21, his medication was
5 switched. And that was a switch made from Trileptal
6 to Nortriptyline, which I mentioned earlier, is an
7 antidepressant that can also be used for pain.

8 The problem in that case, though, is even
9 in a healthy person without a seizure disorder, you
10 can't stop Trileptal cold turkey or it will
11 precipitate seizures. Because it's neuroactive pain
12 medication, it acts on your brain in particular, and
13 it can lower the seizure threshold. So that
14 medication needs to be weaned off over four to six
15 weeks. Unfortunately, it wasn't done that way.

16 So starting at the end of January 2016, he
17 had a medication error that would have predisposed
18 him to seizures. Again, he had several -- we know
19 that he had at least two different kinds of seizures
20 that he was prone to, both obvious shaking,
21 tonic-clonic-type seizures, and also these
22 subclinical or partial or nonshaking-type seizures.

23 THE COURT: Ms. Fox-Young, let's talk a
24 little bit about scheduling. How much longer do you
25 have with this witness? Because we're past 5:30.

1 MS. FOX-YOUNG: Three minutes, Your Honor,
2 or less.

3 THE COURT: All right.

4 MS. FOX-YOUNG: She talks fast.

5 THE COURT: That creates other problems.

6 A. Did you want me to go through more of his
7 medications at the time of --

8 Q. Dr. Brislen, I'd just like to ask you,
9 specifically in February 2016, was Mr. Perez taking
10 any opiates?

11 A. He was taking tramadol twice a day. And
12 we -- there is some controversy about whether or not
13 to classify tramadol as an opiate. Tramadol is a
14 synthetic medication that's sort of like a lesser
15 cousin of classic pain control opiates, like --

16 Q. Okay. Sorry to interrupt. We heard
17 Dr. French testify about tramadol and the way
18 Suboxone can overtake -- like it overtakes tramadol.
19 Are there any other opiates -- and I understand maybe
20 tramadol is not properly characterized as an
21 opiate -- any other opiates that Mr. Perez was
22 taking?

23 A. No, nothing administered or prescribed.

24 MS. FOX-YOUNG: Your Honor, I pass the
25 witness.

1 THE COURT: All right. Thank you, Ms.
2 Fox-Young.

3 Any of the defendants have questions of Dr.
4 Brislen?

5 Mr. Beck. How long do you think your cross
6 will last?

7 MR. BECK: I think it should be short, Your
8 Honor.

9 THE COURT: All right.

10 EXAMINATION

11 BY MR. BECK:

12 Q. And I'm trying to catch up, because you did
13 speak really fast.

14 A. I'm facing the clock.

15 Q. No, no, I got you. That, plus my
16 handwriting is very difficult. You said at the end
17 there -- and I'll work my way back I guess -- that
18 Mr. Perez was taking no other opiates prescribed.
19 Was that your testimony?

20 A. That's right.

21 Q. Was he taking opiates that weren't
22 prescribed?

23 A. I wouldn't know.

24 Q. You didn't see anything in the medical
25 records that reflect he was taking opiates that

1 weren't prescribed?

2 A. Correct.

3 Q. And other than what you've heard from him
4 or his attorneys, do you have any other evidence he
5 was taking opiates that weren't prescribed?

6 A. No.

7 Q. Did you listen to the recordings of Mr.
8 Perez that have been entered into evidence in this
9 hearing?

10 A. No.

11 Q. Did you form an opinion whether he was
12 having any kind of seizure during those recorded
13 conversations?

14 A. No.

15 Q. Did you form an opinion whether he had
16 seizures at any specific times during February of
17 2016?

18 A. I think, you know, similar to what his
19 primary care provider, P.A. Martinez, said yesterday.
20 It would be hard to know for anyone, including Rudy
21 himself. But my answer is no, I don't have an
22 opinion.

23 Q. That's a no.

24 MR. BECK: Nothing further, Your Honor.

25 THE COURT: All right. Thank you, Mr.

1 Beck.

2 Anyone else? Ms. Fox-Young, redirect?

3 MS. FOX-YOUNG: Your Honor, just one
4 question, I think.

5 REDIRECT EXAMINATION

6 BY MS. FOX-YOUNG:

7 Q. Dr. Brislen, how would you describe Mr.
8 Perez' general medical health in February 2016?

9 A. Gosh, it's hard to narrow that down. I
10 would say his general health was fragile, and I would
11 characterize him as very high risk of seizures. If I
12 was his provider at that time, that would have my
13 primary concern, in addition to falls.

14 MS. FOX-YOUNG: Thank you, Your Honor. No
15 further questions.

16 THE COURT: Thank you, Ms. Fox-Young.

17 Dr. Brislen, you may step down. Thank you
18 for your testimony.

19 All right. I'm about to finish up on the
20 opinion for the severance motion for Mr. Sanchez. So
21 I'm going to get that out the door. If y'all have
22 something else you want me to reconsider, think
23 harder about -- Ms. Sirignano?

24 MS. SIRIGNANO: Judge, we filed a notice
25 regarding the 4275, the Garcia drug case, which you

1 requested to be brought into this case.

2 THE COURT: I'll tell you what to do: If
3 you've got a list, tomorrow when y'all are talking to
4 Ms. Wild, give her that list. Okay?

5 MS. SIRIGNANO: I will, Judge. It's been
6 filed and I'll give one to her.

7 THE COURT: All right. So there is a
8 notice that tells me what I need -- yeah, I've seen
9 that.

10 MS. SIRIGNANO: Yes, Judge.

11 THE COURT: Is everybody in agreement? If
12 somebody thinks something ought to go ahead of Ms.
13 Sirignano's motions from the Garcia drug case that
14 we're smoothing over here, let me know. Otherwise,
15 I'll take Ms. Sirignano's as the line-up.

16 All right. I'll see y'all at 9:00.
17 Lawyers need to talk to Ms. Wild to get the schedule
18 down, what we're doing on Wednesday.

19 Thanks for everybody's hard work. Be safe.
20 Have a good weekend. See y'all on Monday.

21 (The Court was adjourned.)
22
23
24
25


C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on December 20, 2017.



Jennifer Bean, FAPR, RMR-RDR-CCR
Certified Realtime Reporter
United States Court Reporter
NM CCR #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
Phone: (505) 348-2283
Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com